

March 2, 2021

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Thomas West
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Dear Messrs. Mazur, Paul, and West,

The undersigned real estate associations are writing to request that the Treasury Department and the Internal Revenue Service (“IRS”) issue guidance permitting an automatic change in the method of accounting for taxpayers that are impacted by the legislative changes made in Section 202 of Division EE of the *Consolidated Appropriations Act, 2021* (P.L. 116-260) (“the CAA”).

As you are aware, the CAA provides a 30-year depreciation period for residential rental property placed in service before January 1, 2018, and held by an electing real property trade or business. Prior to this legislative change, the applicable depreciation period for residential real property was 40 years. To apply a 30-year depreciation period instead of a 40-year period, taxpayers are required to change their method of accounting. A taxpayer is typically required to gain consent from the Commissioner to make such a change.

We believe that requiring taxpayers to seek consent to apply this retroactive change in law is inefficient and unnecessarily burdensome for taxpayers and the government alike. We respectfully request that the Treasury Department and the IRS issue guidance, similar to Revenue Procedure 2020-25, permitting taxpayers to make an automatic change in their method of accounting to apply the 30-year depreciation period by filing Form 3115, Application for Change in Accounting Method, for the current tax year and allowing a section 481(a) “catch-up adjustment.” This would preserve government and taxpayer resources while implementing Congressional intent.

In addition, we request that this guidance be issued promptly. It is common for residential rental property held by an electing real property trade or business to be held in the form of a partnership. Partnerships are required to issue Schedule K-1 (Form 1065), Partner’s Share of Income, Deductions, Credit, Etc, by March 15, and partners who are individuals rely on these Schedules K-1 to file their individual income tax returns, which are due by April 15. If partnerships are able to make an automatic method change that is effective before they are required to issue Schedules K-1, then taxpayers may apply the 30-year depreciation period on their 2020 tax returns when those returns are filed.

We also request that guidance be issued consistent with the relief granted pursuant to Rev. Proc. 2020-22 and Rev. Proc. 2020-23, allowing partnerships subject to the BBA centralized partnership audit regime to file an amended return (Form 1065) and make a late Section 163(j) election and issue amended Schedules K for tax years beginning in 2018 and 2019. For most taxpayers, the ability to make a late Section 163(j) election on an amended return is available until October 15, 2021. However, for partnerships subject to the BBA centralized partnership audit regime, the only available remedy is filing an AAR, as the relief provided in Rev. Proc. 2020-23 only permits amended returns to be filed by September 30, 2020. As Rev. Proc. 2020-23 notes:

Without the option to file amended returns . . . BBA partnerships that already filed their Forms 1065 for the affected years generally are unable to take advantage of the CARES Act relief for partnerships except by filing Administrative Adjustment Requests (AARs) Filing an AAR would result in the partners' only being able to receive any benefits from that relief on the current taxable year's federal income tax return. Thus, if an AAR were filed, the partners generally would not be able to take advantage of CARES Act benefits from an AAR until they file their current year returns, which could be in 2021. This process would significantly delay the relief provided in the CARES Act

For the same reasons that it was appropriate to provide such relief to partnerships seeking to avail themselves of favourable retroactive changes made under the CARES Act, it is appropriate to provide such relief to partnerships seeking to avail themselves of the favourable retroactive changes made under the CCA. As the IRS itself acknowledges in the text quoted above, to permit partnerships and their partners to fully avail themselves of the changes made under the CCA, an amended return is the most appropriate path.

Thank you in advance for your consideration. If you have any questions, please contact Cindy Chetti, Senior Vice President of Government Affairs at the National Multifamily Housing Council, at 202-974-2328 or cchetti@nmhc.org.

Sincerely,

National Multifamily Housing Council
National Apartment Association
American Seniors Housing Association
International Council of Shopping Centers
National Association of Home Builders
NATIONAL ASSOCIATION OF REALTORS®
CCIM Institute
Institute of Real Estate Management
Nareit
The Real Estate Roundtable

Cc: Wendy Friese, Attorney-Advisor, US Treasury