NMHC NATIONAL MULTIFAMILY HOUSING COUNCIL

NAA NATIONAL APARTMENT ASSOCIATION

ESTATE TAX

NMHC/NAA Viewpoint

The apartment industry supports the permanent estate tax legislation agreed to in January 2013 as part of the American Taxpayer Relief Act of 2012. The current-law rules sensibly call for a $5.43 million exemption level, a top tax rate of 40% and the retention of stepped-up basis rules.

Because many apartment firms are small businesses, often family owned, estate planning is a major consideration for company principals. A critical part of planning focuses on the estate tax imposed on the transfer of their assets to their heirs.

As part of the American Taxpayer Relief Act of 2012, Congress established permanent estate tax rules in January 2013. The rules included three key elements:

Exemption level: The estate tax exemption level is the amount that a donor may leave to an heir without incurring any federal estate tax liability. In 2015, the law establishes a $5.43 million exemption ($10.86 million per couple, indexed for inflation).

Tax rate: The estate tax rate applies to the value of an estate that exceeds the exemption level. Under the rules, the maximum rate is 40 percent.

Basis rules: The basis rules determine the tax basis of inherited property. The estate tax today features stepped-up basis rules, which reset the tax basis of inherited property to reflect the fair market value of the property at the time of the inheritance. This is particularly important for the apartment industry because many industry executives' estates include significant amounts of depreciable real property.

Stepped-up basis rules better account for depreciated real property, a critical point for apartment providers.

Without stepped-up basis, the tax basis of inherited property can be quite low if the property was purchased long ago and has been depreciated over a number of years. As a result, heirs could inherit an apartment property with no basis and sizeable debt. If they sell it, they will face significant depreciation recapture taxes and capital gains taxes. This discourages heirs from investing further capital to maintain it and removes valuable affordable housing from the inventory.

As many apartment executives prepare to leave a legacy to their heirs, it's important to have clarity and consistency in the tax code with regard to estate tax rules. For this reason, the apartment industry remains supportive of the permanent estate tax legislation passed in early 2013.

NMHC/NAA Joint Legislative Program
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