DEPRECIATION OF EXISTING BUILDINGS

NMHC/NAA Viewpoint

Congress should pass a technical correction or Treasury should issue regulations clarifying that all multifamily buildings may be depreciated over 30 years for firms electing out of limits on interest deductibility.

Under the Tax Cuts and Jobs Act, multifamily real estate firms may elect out of limitations on interest deductibility so long as they agree to depreciate new property under the Alternative Depreciation System (ADS). Firms able to abide by limits on interest deductibility will continue to depreciate multifamily property over 27.5 years.

At the same time the Act required ADS depreciation for firms electing out of interest deductibility limits, it also reduced the ADS recovery period for multifamily property from 40 years to 30 years.

Congressional intent was to apply this 30-year period to buildings in existence before enactment of the law, as well as to new property. However, due to a drafting oversight, the law subjects multifamily property in existence prior to 2018 to the old 40-year period rather than the intended new 30-year period.

To correct this error, Congress should pass legislation or Treasury should issue guidance clarifying that multifamily properties in existence prior to 2018 may be depreciated over 30 years.

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Requiring 40-year depreciation of existing property would unnecessarily disrupt cash flows and increase the tax liability of multifamily firms, reducing their ability to invest in their assets or develop new properties. That result would be contrary to the goal of the tax reform bill, and it must be prevented.