



July 8, 2015

The Honorable James B. Renacci
United States House of Representatives
Washington, DC 20515

The Honorable Ron Kind
United States House of Representatives
Washington, DC 20515

Dear Mr. Renacci and Mr. Kind:

On behalf of the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA), we are writing to share our concerns regarding the Partnership Audit Simplification Act of 2015 (H.R. 2821), legislation you introduced on June 28, 2015. Although we support your objective of minimizing tax compliance burdens for partnerships and strongly believe that all taxes owed should be paid, we fear your legislation could unintentionally harm investment in multifamily property developments. This would be devastating to an industry that relies on capital to provide safe and decent housing to 37 million residents while contributing \$1.3 trillion to the nation's economy and supporting 12.3 million jobs.

By way of introduction, for more than 20 years, NMHC and NAA have partnered in a joint legislative program to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. As a federation of more than 170 state and local affiliates, NAA is comprised of over 67,000 members representing more than 7.6 million apartment homes throughout the United States and Canada.

The multifamily industry is dominated by "pass-through" entities (e.g., LLCs, partnerships and S corporations) instead of publicly held corporations (e.g., C corporations). Indeed, over three-quarters of apartment properties are owned by pass-through entities. Developers often form investment partnerships as a means of raising the capital necessary to finance the construction of multifamily properties. Moreover, just under half of all investment partnerships economy wide are real estate partnerships.

Given the critical role partnerships play in the multifamily industry and commercial real estate, it is essential that proposals to modify tax rules impacting partnerships do not unintentionally create barriers to investment. In this regard, we are particularly concerned by two provisions in the Partnership Audit Simplification Act of 2015.

First, the proposed legislation would leave real estate partners jointly and severally liable for a partnership's tax deficiencies, including both underpayments and penalties. This means that any one partner -- no matter how big or how small -- could be liable for an entire partnership's tax debts. Because a partnership's potential overall tax debt is unlikely to be quantifiable at the time a prospective partner is considering making an investment, the resulting exposure to large, unforeseen tax debts would significantly decrease the attractiveness of investments in real estate partnerships. We strongly recommend that this language be removed and that a partner's tax liability be limited to the entity's pro-rata share of ownership in the partnership.

Second, we note that your legislation would enable smaller partnerships with 100 or fewer partners to opt out of the audit streamlining provisions included in the bill. We strongly support including such an exemption to help ensure that tax compliance strictures do not unduly inhibit real estate activity. However, we urge you to broaden the

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exemption so that all partnerships can take advantage. Under the proposal, if a smaller partnership has another partnership or REIT as a partner, it will fail to qualify for the exemption. In contrast, the presence of a C corporation of any size as a partner would not impact the ability to opt out of the streamlined audit rules. This means that smaller partnerships that wish to opt out of the streamlined rules would not be able to benefit from the capital of another partnership or REIT. We see no reason to impose arbitrary limits on permissible partners and recommend that all partnerships with 100 or fewer partners be eligible to take advantage of the opt-out rules.

Please note that the suggestions above represent the result of our preliminary analysis of your legislation. We continue to review the proposal but wanted to share our concerns with you given the possibility that these proposals could be used to offset forthcoming legislation.

We look forward to working with you to streamline partnership audits and promote tax compliance while ensuring that investments in multifamily development are not unintentionally impeded. Making all partners in a partnership jointly and severally liable for a partnership's tax liabilities would inhibit a prospective partner's willingness to invest in a multifamily property deal. Additionally, because the tax code should not be a barrier to legitimate business activity, we recommend enabling partnerships with 100 or fewer partners to opt out of the reformed partnership audit rules even if one or more of the partners is a partnership or REIT.

Thank you for considering our views, and please feel free to contact Matthew Berger, NMHC's Vice President of Tax, at 202-974-2300 should you have any questions.

Best Regards,



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