

April 15, 2015

The Honorable John Thune
The Honorable Benjamin L. Cardin
Co-Chairs, Business Tax Reform Working Group
Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Submitted via: Business@finance.senate.gov

Dear Co-Chairs Thune and Cardin:

As the Finance Committee moves forward to reform the tax code, the Depreciation Fairness Coalition (“Coalition”) respectfully submits the following comments. Senate Finance Committee Chairman Hatch and Ranking Member Wyden announced on March 11, 2015, a bipartisan effort to solicit ideas from interested members of the public and stakeholders on how best to overhaul the nation’s broken tax code to make it simpler, fairer, and more efficient. The Coalition is submitting comments for your consideration regarding tax policies important to the group.

The Coalition is an alliance of restaurant, retail, construction, real estate businesses and organizations and has been a strong advocate for reform of the recovery periods for unique classes of real property. Specifically, the Coalition has been working to make permanent the 15-year depreciation schedule for leasehold improvements, restaurant improvements and new construction, and retail improvements. The Coalition is also supportive of the improvements recently made to section 179 that increased the limits and allowed certain real property to qualify for immediate expensing.

The Coalition applauds the Committee for its efforts to develop reform legislation and would like to make the following observations and comments:

Depreciation of Real Property

Under present law, businesses must generally write-off the cost of building and improvements over 39 years. However, Congress has long recognized that a 15-year recovery period is appropriate for certain classes of real property because businesses, such as retail and restaurants, must constantly make improvements to keep up with structural and cosmetic wear and tear caused by customers and employees. In the restaurant industry alone, more than 130 million customers patronize restaurant building structures each and every day. Moreover, it is very common for franchise contracts to require business owners to remodel and update their building structures every six to eight

years. Consequently, although a 15-year recovery period might be too long in some cases, overall this well-established policy provides a more accurate timeframe for taxpayers to recoup the cost of their investments.

Unfortunately, the 15-year recovery period for these properties is temporary policy and must be renewed every year or couple of years. The provision was most recently extended by the *Tax Increase Prevention Act of 2014* for calendar year 2014 but has since lapsed. The piecemeal and temporary approach to the 15-year depreciation schedule, requiring extension every couple of years, presents taxpayers with unnecessary uncertainty and complexity.

Over the years, bipartisan, bicameral legislation has been introduced that would make permanent the 15-year depreciation schedule. In February, Senators Casey and Cornyn introduced S. 394, the *Depreciation Fairness Act of 2015*. The bill already has 12 co-sponsors including several from the Finance Committee (Senators Brown, Burr, Crapo, Heller, Isakson, Menendez, Roberts, and Stabenow). Using tax reform to make permanent the 15-year depreciation schedule for leasehold improvements, restaurant improvements and new construction, and retail improvements would provide taxpayers with predictability, simplicity and fairness. The ability to plan for these expenditures and know what the tax treatment will be in the future is important to those who are making business decisions in today's economy.

Additionally, the Coalition is opposed to proposals that would lengthen the present-law period of 39 years for commercial properties. A lengthened recovery period for an investment with an economic useful life of less than 15 years is inconsistent with a principle that cost recovery approximate decline in economic value. A "one-size fits all" approach to cost recovery for real property might be simple, but it does not recognize the unique characteristics of certain real properties and could result in taxpayers never being able to fully recover the cost of their investment. The Coalition would recommend incorporating a permanent 15-year depreciation schedule for leasehold improvements, restaurant improvements and new construction, and retail improvements in any reformed depreciation regime for real property.

Modification and Permanent Extension of Section 179 Rules

The Coalition supports recent efforts to permanently expand and modify the temporary increase in section 179 expensing. The Coalition supports making the improvements to the section 179 expensing rules permanent, including increasing the dollar amounts and indexing the thresholds. The Coalition would urge the Committee to retain the modification made in 2010 to make qualified real property eligible for section 179 expensing. Extending the 2010 improvements would allow taxpayers to immediately deduct the cost of qualifying property, rather than to recover such costs through depreciation deductions. Moreover, including qualified real property would encourage small businesses to make capital investments and would have the added benefit of simplifying tax administration and lessening taxpayer compliance burdens for millions of small businesses.

Thank you for the opportunity to share our views on tax reform. As the Committee moves forward with its deliberations, we look forward to working with you and would be pleased to serve as a resource. If you have any questions of the Coalition, please feel free to contact Dave Koenig, Vice President, National Restaurant Association (202-331-5905 dkoenig@restaurant.org).

Sincerely,

Associated Builders and Contractors, Inc.
Associated General Contractors of America
Association of Kentucky Fried Chicken Franchisees
Auntie Anne's, Inc.
Bloomin' Brands, Inc.
Buffalo Wild Wings, Inc.
Building Owners & Managers Association International
Brinker International
Burger King Corporation
Dunkin Brands, Inc.
International Franchise Association
International Pizza Hut Franchise Holders Association
National Federation of Independent Business
National Franchisee Association
National Council of Chain Restaurants
National Restaurant Association
National Retail Federation
Retail Industry Leaders Association
The Real Estate Round Table
The Taco Bell Franchisee Association
The Wendy's Company
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