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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

JEFFREY WRASE, STAFF DIRECTOR AND CHIEF ECONOMIST
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August 16, 2018

The Honorable Steven T. Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable David J. Kautter
Assistant Secretary of the Treasury for Tax Policy and
Acting Commissioner of the Internal Revenue Service
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Secretary Mnuchin and Acting Commissioner Kautter:

We are writing as the Members of one of the Committees of jurisdiction responsible for the drafting of the tax-reform legislation that was enacted on December 22, 2017 (H.R. 1, 115th Cong., 1st Sess., Pub. L. 115-97). We write to clarify the congressional intent of this recently enacted tax legislation (specifically, sections 13204, 13302, and 13307 of H.R. 1), which is reflected in the conference report, revenue estimates, and other legislative history.

While this letter focuses on these three important provisions, we are continuing a thorough review of Pub. L. No. 115-97 to identify other instances in which the language as enacted may require regulatory guidance or technical corrections to reflect the intent of the Congress. After this review, we intend to introduce technical corrections legislation to address any items identified in the on-going review.

Section 13204 of H.R. 1 provides rules related to the depreciation of real property. We have identified a technical correction that is necessary to reflect the legislative intent with respect to this provision. Specifically, in eliminating the separate definitions of qualified leasehold improvement, qualified restaurant, and qualified retail improvement property and providing a new single definition of qualified improvement property, the language in section 13204(a) failed to designate qualified improvement property as 15-year property under the modified accelerated cost recovery system ("MACRS"). In addition, there is a typographical error in a cross-reference identifying qualified improvement property as property which is recovered over 20 years under the alternative depreciation

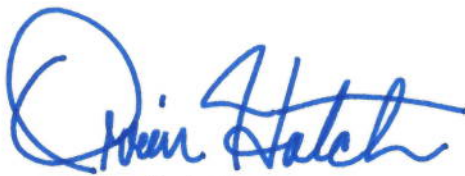
system ("ADS"). Congressional intent was to provide a 15-year MACRS recovery period and a 20-year ADS recovery period for qualified improvement property. Such intent is set forth in the Conference Report to accompany H.R. 1 (H.R. Rep. 115-466, at p. 366).

Section 13302 of H.R. 1 modifies the rules governing the deduction of net operating losses ("NOLs"). We have identified a technical correction that is necessary to reflect the legislative intent with respect to this provision. Specifically, section 13302(e)(2) includes language stating that the modifications made to NOL carryforwards and carrybacks apply to net operating losses arising in taxable years *ending* after December 31, 2017. Congressional intent was to provide that the NOL carryforward and carryback modifications are effective for NOLs arising in taxable years *beginning* after December 31, 2017. Such intent is set forth in the Conference Report to accompany H.R. 1 (H.R. Rep. 115-466, at p. 394).

Section 13307 of H.R. 1 denies a deduction for (1) any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement ("NDA"), or (2) attorney's fees related to such a settlement or payment. We have identified a technical correction that is necessary to reflect the legislative intent with respect to this provision. Specifically, the provision arguably prohibits the recipient of any payment from deducting legal fees incurred in pursuing sexual harassment cases, because such legal fees are "related to" a settlement or payment that is subject to a NDA. Congressional intent was that these attorney's fees would not be subject to this rule.

We send this letter to provide sufficient clarification so that any guidance that is issued related to sections 13204, 13302, and 13307 of H.R. 1 (Pub. L. No. 115-97) and the Internal Revenue Service's enforcement of them reflects the Congress' intent. Thank you for your cooperation on this matter.

Sincerely,

A handwritten signature in blue ink that reads "Orrin Hatch".


Orrin Hatch
Chairman

A handwritten signature in blue ink that reads "Chuck Grassley".

Chuck Grassley

A handwritten signature in blue ink that reads "Mike Crapo".

Mike Crapo

A handwritten signature in blue ink that reads "Pat Roberts".


Pat Roberts



Michael Enzi



John Cornyn



John Thune



Richard Burr



Johnny Isakson



Rob Portman



Patrick Toomey



Dean Heller



Tim Scott



Bill Cassidy