

## Congress Must Address Qualified Improvement Property Technical Correction

Fix will allow Retail & Restaurant Owners to Reinvest in their Businesses

### ISSUE

The Tax Cuts and Jobs Act (TCJA) contained a drafting error with respect to the depreciable life of improvements made to retail stores, restaurants and other commercial buildings. These improvements were supposed to retain their pre-TCJA status as “15-year property,” which is clearly explained in the Conference Report accompanying the Act, and as such would also be eligible for bonus depreciation -- an extra depreciation allowance available to all property with a depreciable life that is less than 20 years. Under TCJA, bonus depreciation is scheduled to provide that 100% of the cost of eligible property can be written off in the first year through December 31, 2022. Although the category of improvements to retail stores, restaurants and other commercial buildings is defined in the TCJA as “qualified improvement property,” the drafters inadvertently failed to include this category in any of the ‘classifications of property’ under IRC Sec. 168(e) that assign a depreciable life to the property. As a result, it is widely assumed, that “qualified improvement property” (QIP) would be included in the generic category of non-residential real property, which has a 39-year depreciable life.

### IMPACT ON RETAILERS

Because of the drafting error in the TCJA retailers and restaurants must depreciate improvements made to our stores over 39 years, instead of one year. This means that instead of a 100% deduction in the year we incur the costs, we are getting a 2.5% deduction in the year we incur the costs, with the remaining 97.5% of the cost of these assets being written off over the following 38 years. Because this error makes it so expensive to make improvements to our stores, retailers and restaurants are delaying these investments to the extent possible until the mistake is fixed. Retailers and restaurants are also foregoing opportunities to buy stores closed by other retailers and remodel and rebrand them for their own use, which means that permanent jobs are not created in those abandoned stores.

If Treasury does not issue guidance prior to retailers' November 15 filing deadline for their tax returns, retailers with very small tax departments will have to file as many as 100 federal, state and local income tax returns based on the incorrectly drafted law, and then amend all those returns after the law is corrected. Retailers and restaurants will also have to amend their financial accounting for the fixed assets included in QIP. Retailers estimate that the "re-booking" of fixed assets could require a few hundred man-hours of work.

### **HOW CONGRESS CAN HELP**

Congress should enact Technical Corrections legislation to this drafting error in TCJA as soon as possible. Because this error is recognized as a true drafting mistake and the revenue implications of the correct treatment of QIP were already scored by the Joint Committee on Taxation when that bill was enacted, correcting this error now will not be considered to have any additional revenue implications to the government.

Because retailers have to file tax returns by November 15, we ask that Members of Congress urge the Treasury Department to provide interim guidance that they will not audit the QIP position taken by taxpayers on their FY '18 tax returns so that taxpayers do not have to amend dozens of federal, state and local income tax returns after Congress corrects the drafting error. Treasury Departments in previous Republican and Democratic Administrations have provided this type of guidance when Congressional intent was clear, in order to prevent drafting errors from interfering with ordinarily planned business transactions and to avoid undue tax administrative burdens of filing returns and later amending them.