

Leasehold Depreciation

Current Law:

Through the end of 2011, tenant improvements were depreciated on a 15-year schedule. On January 1, 2012, the law reverted back to a 39-year depreciation schedule.

BOMA Position:

Depreciating leasehold improvements at a rate of 1/39th per year until the improvement goes “out of service” runs counter both to common sense and the reality of the marketplace. It is a hidden and inequitable tax on the commercial real estate industry. The tax code should be amended to more closely reflect the reality of the marketplace. *Congress must act now to extend or make permanent the 15-year depreciation period.*

Current Status:

In late 2010, the provision permitting building owners to depreciate leasehold improvements over 15 years was extended retroactively for 2010 and 2011 as part of a broad tax ‘extenders’ package that includes a variety of business tax issues. On January 1, 2012, the depreciation schedule returned to a 39-year timeline.

In the first session of the 112th Congress, Reps. Jim Gerlach (R-Penn.) and Richard Neal (D-Mass.) introduced H.R. 1265, legislation that would make permanent the 15-year depreciation schedule. A companion bill, S. 687, was introduced in the Senate by Sens. Kent Conrad (D-N.D.) and John Cornyn (R-Tex.). Thus far, the House bill has 51 cosponsors while the Senate bill has 14.

Supporting Arguments:

If your member is already a cosponsor of the bill (see cosponsor list), thank them for their support and express the need for the tax ‘extenders’ bill to be passed sooner rather than later, given that tax certainty aids in job creation and investment. If possible, provide examples of how the uncertainty in the tax code negatively affects your operation.

- Leasehold improvements are the build-outs to tenant space from floor to ceiling and everything in between.

- A 15-year depreciation schedule more closely reflects the reality of the marketplace. Leasehold improvements typically don't last longer than 15 years before they are replaced. In fact, the vast majority of leases negotiated today range from three to seven years.
- This provision is relatively non-controversial, and through the years, has had bi-partisan support in both chambers of Congress.
- JOB CREATION and economic stimulation:
 - We urge you to pass the tax "extenders" bill, of which leasehold depreciation is a part, as soon as possible and retroactive to Jan. 1, 2012, to provide the certainty needed to create jobs and aid investment.
 - Almost \$250 billion is invested in commercial real estate improvements annually -- with \$15 billion of that amount going to leasehold improvements.
 - An increase in leasehold improvements leads to an increase in output and employment of architectural and design firms, construction companies, building material suppliers and other construction-related services. Congress should not add additional deterrents to improving leased space during times when the economy is already struggling.
 - Depreciating improvements over 39 years reduces investment in improvements that help foster productive economic growth.
- Effect on small businesses:
 - Small businesses are negatively impacted by 39 year leasehold depreciation treatment because they have a dynamic growth rate and their space needs change along with their growth.
 - These small businesses are already negatively affected by the economy.

Leasehold Depreciation Bill Cosponsors (H.R. 1265/S.687)*
112th Congress

<p>Rep. Gerlach, Jim (R-PA-06) – Lead Sponsor Rep. Akin, W. Todd (MO-02) - 5/4/2011 Rep. Austria, Steve (OH-07) - 4/15/2011 Rep. Bachus, Spencer (R-AL-06) - 11/2/2011 Rep. Barletta, Lou (PA-11) - 12/8/2011 Rep. Berkley, Shelley (D-NV-01) - 5/13/2011 Rep. Bilirakis, Gus M. (FL-09) - 9/9/2011 Rep. Boren, Dan (D-OK-2) - 11/2/2011 Rep. Boustany, Charles W., Jr. (R-LA-07) - 6/23/2011 Rep. Burton, Dan (R-IN-05) - 6/23/2011 Rep. Calvert, Ken (R-CA-44) - 6/24/2011 Rep. Canseco, Francisco "Quico" (R-TX-23) - 5/24/2011 Rep. Coffman, Mike (R-CO-06) - 12/16/2011 Rep. Crowley, Joseph (D-NY-07) - 12/8/2011 Rep. Culberson, John Abney (RTX-07) - 5/13/2011 Rep. Diaz-Balart, Mario (R-FL-21) - 12/14/2011 Rep. Ellmers, Renee L. (R-NC-02) - 6/13/2011 Rep. Fitzpatrick, Michael G. (R-PA-08) - 5/26/2011 Rep. Fudge, Marcia L. (D-OH-11) - 12/12/2011 Rep. Gardner, Cory (R-CO-04) - 12/14/2011 Rep. Grimm, Michael G. (R-NY-13) - 10/14/2011 Rep. Guthrie, Brett (R-KY-02) - 10/14/2011 Rep. Hanabusa, Colleen W. (D-HI-1) - 12/12/2011 Rep. Herger, Wally (R-CA-02) - 4/1/2011 Rep. Holden, Tim (D-PA-17) - 10/14/2011 Rep. Jenkins, Lynn (R-KS-02) - 7/21/2011 Rep. Johnson, Bill (R-OH-06) - 6/23/2011 Rep. Jones, Walter B., Jr. (R-NC-03) - 5/13/2011 Rep. Kind, Ron (D-WI-03) - 12/16/2011 Rep. Kline, John (R-MN-02) - 5/4/2011 Rep. Latham, Tom (R-IA-04) - 5/5/2011 Rep. Long, Billy (R-MO-7) - 5/13/2011 Rep. Lujan, Ben Ray (D-NM-03) - 5/25/2011 Rep. Lummis, Cynthia M. (R-WY) - 5/13/2011 Rep. Manzullo, Donald A. (R-IL-16) - 7/8/2011 Rep. Marchant, Kenny (R-TX-24) - 7/21/2011 Rep. McKinley, David B. (R-WV-01) - 6/15/2011 Rep. Miller, Jeff (R-FL-01) - 1/18/2012 Rep. Moore, Gwen (D-WI-04) - 12/8/2011 Rep. Neal, Richard E. (R-MA-02) - 3/30/2011 – Lead D Rep. Nunes, Devin (R-CA-21) - 10/6/2011 Rep. Paulsen, Erik (R-MN-03) - 9/12/2011 Rep. Posey, Bill (R-FL-15) - 6/23/2011 Rep. Rehberg, Denny (R-MT) - 7/21/2011 Rep. Ross, Dennis (R-FL-12) - 11/18/2011 Rep. Schilling, Robert T. (R-IL-17) - 10/6/2011 Rep. Schock, Aaron (R-IL-18) - 9/12/2011 Rep. Stivers, Steve (R-OH-15) - 4/15/2011 Rep. Tiberi, Patrick J. (R-OH-12) - 5/4/2011 Rep. Walberg, Tim (R-MI-07) - 5/5/2011 Rep. Welch, Peter (D-VT) - 6/23/2011 Rep. Young, C.W. Bill (R-FL-10) - 6/15/2011</p>	<p>Sen. Conrad, Kent (D-ND) – Lead Sponsor Sen. Cochran, Thad (R-MS) - 3/31/2011 Sen. Cornyn, John (R-TX) - 3/30/2011 – Lead R Sen. Crapo, Mike (R-ID) - 3/30/2011 Sen. Hutchison, Kay Bailey (R-TX) - 3/30/2011 Sen. Inhofe, James M. (R-OK) - 3/30/2011 Sen. Isakson, Johnny (R-GA) - 11/2/2011 Sen. Johanns, Mike (R-NE) - 10/20/2011 Sen. Landrieu, Mary L. (D-LA) - 5/2/2011 Sen. Manchin, Joe, III (D-WV) - 5/2/2011 Sen. Roberts, Pat (R-KS) - 6/14/2011 Sen. Snowe, Olympia J. (R-ME) - 3/30/2011 Sen. Tester, Jon (D-MT) - 11/16/2011 Sen. Vitter, David (R-LA) - 3/30/2011 Sen. Wicker, Roger F. (R-MS) - 3/30/2011</p> <p><i>*Current as of 01/19/2011</i></p>
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