March 4, 2015

Mr. Merrill Feldstein
Internal Revenue Service
Attn: CC:PA:LPD:PR
(Rev. Proc. 2015-20), Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Mr. Feldstein:

On behalf of the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA), we are writing to offer comments regarding the $500 de minimis safe harbor limit in the Internal Revenue Service's (IRS) final tangible property regulations. We greatly appreciate the IRS's request for comments in Revenue Procedure 2015-20 as to whether this de minimis amount should be increased. We recommend the IRS raise the safe harbor limit to $5,000 per invoice or per line item as substantiated by the invoice to promote ease of compliance and simplicity for smaller owners and operators of multifamily housing.

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.

Under current regulations, taxpayers with an applicable financial statement (AFS) may deduct up to $5,000 per invoice or per item for qualified costs that are substantiated by an invoice. Taxpayers without an AFS, however, are limited to a deduction of only $500 per invoice or per item as substantiated by an invoice. Although we certainly respect the necessity of complying with tax laws and differentiating between those expenditures that may be deducted versus those that must be capitalized, we strongly believe that all taxpayers, regardless of whether they issue an AFS, should be able to rely on a $5,000 safe harbor to deduct expenditures. We take this position for the following reasons:

First, the tax code should not unnecessarily divert resources from economically beneficial business activities to costly compliance requirements. The operation of multifamily buildings involves numerous maintenance and repair expenses that are incurred on a daily basis. For those operators who do not produce an AFS, tracking and evaluating literally every expenditure that exceeds $500 represents a significant and costly compliance burden. This time and money could be much better spent on maintaining the nation's 19.7 million apartment homes. A $5,000 limit would eliminate much of this unnecessarily burdensome requirement while still requiring larger expenditures to be capitalized.

Second, the $500 safe harbor limit discriminates against smaller owners and operators of multifamily housing. Such owners and operators, in many cases, simply do not produce an AFS because they are not otherwise required to do so. Instead, they are keenly focused on helping to provide safe and decent shelter to the nation's 37 million apartment

residents. These smaller and mid-sized taxpayers, however, are put at a disadvantage relative to their larger counterparts who are able to rely on a $5,000 repair and maintenance safe harbor. The IRS should act to eliminate this imbalance by setting a uniform $5,000 repair and maintenance safe harbor.

Third, the current regulations describe a building as a Unit of Property (UoP), and expenditures are required to be evaluated with respect to the UoP affected. A typical 200 unit suburban multifamily complex is in reality 20 housing buildings, each including approximately ten individual apartment units per building, plus a clubhouse and land improvements, which in total amounts to 22 UoPs. The size, scope and expense of this compliance requirement becomes extraordinarily burdensome without the more reasonable de minimis safe harbor limit of $5,000. Larger operators generally have the same number of UoPs in a 200 unit complex as does a smaller operator; however, the smaller operator is penalized due to the lower safe harbor limit of $500.

Fourth, we see a substantial burden looming for the IRS in enforcing compliance with the tangible property regulations. An examining Revenue Agent will spend a significant portion of the audit budget reviewing small, immaterial tangible property transactions to determine compliance with the transaction-driven principles of restorations, adaptations, improvements and betterments as well as the repairs and maintenance provisions. This, in and of itself, will lead to more controversy with the IRS despite that one of the stated goals of the new regulations was to alleviate or at least reduce controversy. Increasing the de minimis safe harbor limit to $5,000 will, therefore, also increase audit efficiency for the IRS.

As an additional suggestion, we recommend that the UoP for multifamily properties not be designated as an individual building. Keeping track of expenditures based on 21 different buildings in a 200 unit property, for example, is too burdensome for any taxpayer. Rather we suggest that the entire multifamily property be designated as the UoP for tangible property regulations purposes. Furthermore, viewing the property as a whole rather than as a group of buildings more closely follows how the property is purchased, sold and operated.

We look forward to working with you to strike the appropriate balance between the need for tax compliance and removing excessively expensive administrative tax compliance burdens. We see a $5,000 repair and maintenance safe harbor as an amount that will enable owners and operators of multifamily housing to satisfy their compliance obligations without diverting resources away from the housing of a significant portion of America's citizens. 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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National Multifamily Housing Council

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