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Retailers Not Eligible for 100% Leasehold Improvement Write-Off Due to Legislative Glitch

The 2017 Tax Cuts and Jobs Act provided a 100% first year write-off for many types of capital expenditures. Congressional tax writers intended this benefit to be available for leasehold improvements, which would be a boon to retail and restaurant businesses and their landlords. Unfortunately, in the rush to get the tax bill pushed through, there was a legislative drafting error that caused leasehold improvements to be left out of the definition of expenditures eligible for this tax benefit. Worse yet, leasehold improvements were given a longer write-off period (39 years) than under the prior law (15 years).

It was hoped the Treasury Department would try to fix this mistake under the 100% write-off regulations, even though Treasury officials have made statements saying this would require a legislative fix. Sadly, the final regulations do not fix this mistake, so the only path to correction is an amendment to the tax code. Brick-and-mortar retailers are facing enough challenges to their business model, and it would be helpful if they were able to utilize this tax benefit for leasehold improvements as intended by Congress. However, given the current political environment in Washington, a legislative fix appears unlikely to happen anytime soon.

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