TAX CUTS & JOBS ACT

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NMHC VIEWS GOING INTO TAX REFORM

- Tax reform has capacity to reshape the multifamily industry.

- Reform can impact taxes paid at all stages of development:
  - Building
  - Operating
  - Sale
  - Transfer to Heirs

- NMHC supports reform that promotes economic growth and investment in multifamily housing.

TAX REFORM – KEY MULTIFAMILY ISSUES

- Protect Flow-Through Entities / REIT Structure
- Retain Full Business Interest Deduction
- Ensure Depreciation Rules Avoid Harming Real Estate
- Maintain Like-Kind Exchanges for Real Property
- Preserve Carried Interest
- Maintain Estate Tax and Basis Step-Up
- Preserve the Low-Income Housing Tax Credit

TAX CUTS & JOBS ACT

- Signed into law on December 22, 2017
- Impacts all of NMHC's Key Issues
- Provisions Generally Effective in 2018
- Key Tax Reduction Provisions for Multifamily Sunset in Many Cases (e.g., after 2025)

TAX RATES

- Prior Law Tax Rates
  - Flow-through entity: 39.6 percent max rate
  - Individual: 39.6 percent max rate (effective at $418,400 single filers / $470,700 married couples)
  - REIT: 39.6 percent max rate on dividends
  - Corporate: 35 percent max rate
- Tax Cuts & Jobs Act
  - Individual: 37 percent max rate (effective at $500,000 individuals / $600,000 married couples) (through 2025)
  - Flow-through entity: 20 percent deduction (29.6 percent max rate) for qualifying business income (through 2025)
  - REIT: 20 percent deduction for REIT dividends (through 2025)
  - Corporate: 21 percent max rate (permanent)

TAX RATES – THE 20% DEDUCTION

- Flow-through entity 20 percent deduction mechanics
  - For taxpayers earning over $157,500 (single filers) and $315,000 (married couples), deduction is limited to *greater* of:

1. 50% of the taxpayer's share of aggregate W-2 wages paid by the business; OR
2. 25% of the taxpayer's share of aggregate W-2 wages paid by the business *plus* 2.5% of the unadjusted basis, immediately after acquisition, of all qualified property (i.e., structures but not land).

  - Applies only to property held at the end of a taxable year.
  - Deduction applies at the trade or business level.
    - NMHC supports allowing grouping of multiple partnerships into a single trade or business.
  - Income from trusts and estates and REIT dividends eligible.
    - REIT deduction must be clarified to allow shares held by mutual funds to qualify.

TAX RATES – THE 20% DEDUCTION

Scenario: A multifamily firm purchases an apartment building for \$20 million (\$14 million attributable to the structure, \$6 million attributable to the land). The building generates net annual income of \$1.25 million.

Maximum Deduction Before Limitation: The maximum pass-through deduction would be \$250,000 (20% of \$1.25 million).

Deduction Limitation Calculation: The deduction would be limited to 2.5 percent of unadjusted basis (i.e., 2.5 percent of \$14 million), or \$350,000.

Maximum Deduction Available to Taxpayer: The taxpayer gets the full deduction of \$250,000, regardless of the wage limitation.

DEDUCTIBILITY OF BUSINESS INTEREST

- Prior Law
  - Business interest fully deductible.
- Tax Cuts & Jobs Act
  - Imposes limitation on business interest (exempts firms with less than $25 million in average annual gross receipts over past three years).
  - Real estate companies may elect to maintain full deductibility of interest.
  - Election requires longer depreciation period for buildings.

DEPRECIATION

- Prior Law
  - Depreciation of Residential Structures: 27.5 years.
  - Depreciation of Tangible Personal Property: Bonus depreciation through 2019 / MACRS thereafter.

- Tax Cuts & Jobs Act
  - Depreciation of Residential Structures: 30 years if electing out of limits on interest deductibility, otherwise 27.5 years.
  - Statute could be read to require 40 years for existing structures for firms electing out of interest.
    - NMHC is asking Treasury to clarify existing structures should be depreciated over 30 years.
  - Depreciation of Tangible Personal Property:

1. Full expensing through 2022.
2. Bonus depreciation thereafter through 2026 (80% in 2023, 60% in 2024, 40% in 2025, and 20% in 2026).

LIKE-KIND EXCHANGES

- Prior Law
  - Like-Kind Exchanges: Available for all property held for investment or use in a trade or business.

- Tax Cuts & Jobs Act
  - Like-Kind Exchanges: Limited to exchanges of real property.

CARRIED INTEREST

- Prior Law
  - Carried Interest: Eligible for capital gain if asset held for at least one year.

- Tax Cuts & Jobs Act
  - Carried Interest: Eligible for capital gain if asset held by partnership and partnership interest held by partner for at least three years.

ESTATE TAX

- Prior Law
  - Exemption: $5.49 million individual / $10.98 million married couple
  - Top Rate: 40%
  - Basis Rule: Step up
- Tax Cuts & Jobs Act
  - Exemption: Doubled in 2018 (reverts to prior law in 2026)
  - Top Rate: 40%
  - Basis Rule: Step up

LOW-INCOME HOUSING TAX CREDIT

- Prior Law
  - LIHTC in law to help finance affordable units.
  - Private Activity Bonds support LIHTC.
- Tax Cuts & Jobs Act
  - LIHTC and Private Activity Bonds retained as under prior law.
  - Lower corporate tax rate and chained CPI could lead to loss of 235,000 affordable units over next 10 years (Novogradac and Company LLP).
  - Recent Legislation: 12.5% Credit Increase (2018-2021) & Income Averaging

ACTIVE LOSSES

- Prior Law
  - Active business losses fully deductible against active business income.
- Tax Cuts & Jobs Act
  - Deduction of net active pass-through losses against wage or portfolio income limited to $500,000 (married filers) and $250,000 (single filers).
  - Disallowed losses may be carried forward as part of a taxpayer's net operating loss.
  - Provision effective through 2025.

DEVELOPMENT INCENTIVES

- Prior Law Granted Two Other Development Incentives:
  - New Markets Tax Credit (effective through 2019).
  - Historic Rehabilitation Tax Credit.
- Tax Cuts & Jobs Act
  - New Markets Tax Credit retained as under current law.
  - The 20% historic credit is retained but spread over five years.
  - The 10% credit for pre-1936 non-historic buildings is repealed.
  - Opportunity Zones for Capital Gains Deferral
    - Deferral of gains invested in Opportunity Fund to as late as 2026
    - No tax on Opportunity Fund gains held at least 10 years

THANK YOU

- NMHC will seek to ensure regulations implementing the provisions operate as Congress intended.
- NMHC will look to make permanent beneficial tax provisions that expire.

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