



NATIONAL
MULTIFAMILY
HOUSING
COUNCIL

TAX CUTS & JOBS ACT

NMHC TAX COMMITTEE

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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).
- ❑ Deduction applies at the entity level (for those with multiple partnerships).
- ❑ Applies only to property held at the end of a taxable year.
- ❑ Income from trusts and estates and REIT dividends eligible.

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 annual rental 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 (unclear whether 30 years or 40 years for existing structures and unclear how transition will apply) - otherwise, 27.5 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.
- ❑ Value of LIHTC reduced by lower corporate tax rate.

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.

PARTNERSHIP AUDITS

- New partnership audit regime takes effect in 2018
 - Partnerships to be audited at the partnership level as opposed to the individual partner level.
 - Partnerships may “push out” adjustments to partners.
 - Until December 15, 2017, it was unclear if push-outs could go through multiple tiers. New regulation allows multiple tier push-outs.
- NMHC extremely involved in new partnership audit law.
 - Shaped implementing legislation by successfully asking Congress to drop provision making partners jointly and severally liable for partnership tax liabilities.
 - Asked IRS to allow push-outs through multiple tiers.

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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