House Passes Tax Reform Legislation as Senate Finance Approves Competing Version – Analysis

Both the House and Senate bills are broadly similar in many respects and reflect these priorities, though details differ. Notably, to comply with Senate budget rules, many of the Senate's tax cuts targeted to individuals and pass-throughs (including the LLCs, partnerships, and S Corporations that dominate the multifamily industry) expire at the end of 2025 while tax increase provisions are permanently imposed.

Treatment of Pass-Throughs: Both the House and Senate bills would cut tax rates for individuals and businesses. Not only do both bills reduce marginal income tax rates applicable to pass-through businesses, but they also enable a portion of business income to be taxed at lower rates.

Under the House bill, a portion of pass-through business income would be eligible for a maximum 25 percent tax rate. In the base case, 30 percent of pass-through business income would be eligible for the 25 percent rate. However, a provision is included that would enable capital-intensive businesses, including multifamily entities, to qualify for a higher percentage of income eligible for the 25 percent rate. All passive income attributable to a multifamily business would be taxed at 25 percent.

Under the Senate bill, individuals could take a 17.4 percent deduction on pass-through income through 2025. The deduction would generally be capped at 50 percent of the taxpayer's share of wages paid by the underlying business.

Cost Recovery (Like-Kind Exchanges, Interest Deductibility and Depreciation): With regard to cost recovery, both bills preserve like-kind exchanges for real property and the ability to retain the full deductibility of business interest. However, there are consequences regarding the depreciation of multifamily buildings and assets for real estate firms for preserving full interest deductibility.

On the House side, multifamily firms would be unable to expense capital assets that are not real property. They would, however, retain 27.5-year depreciation for buildings.

On the Senate side, the depreciation of a multifamily building would rise to 30 years from 27.5 years with a possible exception for firms with less than $15 million in gross receipts. Multifamily firms agreeing to forego full interest deductibility could depreciate buildings over 25 years. Notably, the Senate bill appears to enable multifamily firms to expense non-real-property assets through 2022 even if they elect out of interest deductibility limits.

Carried Interest: The House bill would require a taxpayer to hold an asset for three years to receive capital gains treatment with respect to carried interest. The Senate bill also requires a taxpayer to hold an asset for three years to receive capital gains treatment with respect to carried interest.

Treatment of Losses: The Senate bill includes a brand-new proposal that would limit active income losses of flow-through entities. Under the proposal, a taxpayer could deduct only $500,000 ($250,000 for single filers) of net active pass-through losses against wage or portfolio income. Disallowed losses could be carried forward as part of a taxpayer's net operating loss. This proposal would sunset after 2025. The House bill does not include a similar proposal.

Low-Income Housing Tax Credit: Both chambers would retain the Low-Income Housing Tax Credit. However, the House bill eliminates tax-exempt private activity bonds, which would jeopardize the efficacy of the 4 percent LIHTC. These bonds are retained in the Senate package. Neither bill, however, addresses the loss of equity the credit would raise as a result of cutting the corporate tax rate to 20 percent.

Additionally, the Senate bill makes several technical changes to the LIHTC. Most notably, the measure would address NIMBYism by prohibiting local approval and contribution requirements. Specifically, qualified allocation plans could not consider local support or opposition to a project or any local government contribution to the project, except to the extent such contribution is taken into account as part of a broader consideration of the project's ability to leverage outside funding sources, and is not prioritized over any other source of outside funding.

The Senate bill would also rename LIHTC as the Affordable Housing Tax Credit.

Estate Tax: Both the House and Senate bills immediately double the estate tax exclusion while retaining stepped-up basis. The House repeals the estate tax beginning in 2025. In the Senate bill, the expanded estate tax exclusion expires after 2025 with the exclusion amount reverting to current law.

NMHC/NAA has long supported tax reform that promotes economic growth and investment in rental housing without unfairly burdening apartment owners and renters relative to other asset classes. To this end, the apartment industry believes that any tax reform proposal must:

- Protect Pass-Through Entities from Higher Taxes or Compliance Burdens;
- Ensure Depreciation Rules Avoid Harming Multifamily Real Estate;
- Retain the Full Deductibility of Business Interest;
- Preserve the Ability to Conduct Like-Kind Exchanges;
- Maintain the Current Law Tax Treatment of Carried Interest;
- Preserve and Strengthen the Low-Income Housing Tax Credit; and
- Maintain the Current Law Estate Tax.

Here is a look at how the bills compare to current law and one another.

COMPARISON OF TAX REORM PROPOSALS			
Provision	**Current Law**	**House Bill**	**Senate Bill**
Business Tax Rates	Flow-through entity: Maximum rate of 39.6% REIT dividend maximum rate of 39.6% Corporation: Maximum Rate of 35%	Flow-through entity: Portion of Active Business Income from Capital: 25%. Portion of Active Business Income from Labor: 39.6% Maximum. Special Rules Determine Capital / Labor Percentages with default being 30% capital / 70% labor. Passive Income and REIT dividends: 25%. Corporation: Maximum Rate of 20% All effective 2018 and permanent.	Flow-through entity: 17.4% deduction available for qualified pass-through income. Amount is limited to 50% of the individuals share of aggregate W-2 wages paid by the business. REIT dividends eligible for 17.4% deduction. Corporation: Maximum Rate of 20% Flow-through entity deduction effective 2018 and sunset after 2025. Corporate rate cut effective 2019 and permanent.
Individual Tax Rates	Seven brackets ranging from 10% to 39.6%. Highest rate effective at $418,400 (single filers) / $470,700 (married filers)	Four brackets ranging from 12% to 39.6%. 12% rate phased-out for higher-income taxpayers, but lower-rate brackets wider than under current law. Highest rate effective at $500,000 (single filers) / $1 million (married filers) Rate structure is permanent.	Seven tax brackets ranging from 10% to 38.5%. Highest rate effective at $500,000 (single filers) / $1 million (married filers) Rate structures expires after 2025.
Depreciation of Buildings	27.5 years	Current Law	30 years. 25 years if company elects to limit interest deductibility or has under $15 million in gross receipts
Depreciation of Other	Depreciated over applicable class life, though	Depreciated over applicable class life. Real	Real estate eligible for expensing of non-real

Assets	bonus depreciation available through 2019. Small businesses may expense up to $500,000 of qualifying property. Amount reduced over $2 million in qualifying property.	estate not eligible for expensing of non-real property assets available to other businesses effective through 2022. Small businesses may expense up to $5 million of qualifying property. Amount reduced over $20 million in qualifying property. Provision effective 2018-2022.	property assets through 2022. Small businesses may expense up to $1 million of qualifying property. Amount reduced over $2.5 million in qualifying property. Qualifying property expanded to include assets involved in furnishing multihousing and student housing, including furniture and appliances.
Business Interest Deductibility	Fully deductible for all businesses	Fully deductible for real estate businesses. Limits on interest deductibility apply to firms outside of real estate	Fully deductible for real estate businesses that elect out of limits on interest deductibility.
Like-Kind Exchanges	Included in current law	Retained for real property	Retained for real property
Carried Interest	Taxed at capital gains rates if held at least 1 year	Taxed at capital gains rates if held at least 3 years	Taxed at capital gains rates if held at least 3 years
Low-Income Housing Tax Credit & Private Activity Bonds	Current Law	Current Law, but efficacy of LIHTC reduced by corporate rate reduction and elimination of private-activity housing bonds.	Current law, but efficacy reduced due to corporate rate reduction. Provision also includes technical changes to LIHTC and renames program as Affordable Housing Tax Credit.
Estate Tax	$5.49 million ($10.98 million per couple)	Exclusion doubled in 2018 and tax permanently	Exclusion doubled in 2018. Stepped-up basis

	exclusion, 40% rate, and stepped-up basis for inherited assets.	repealed in 2025. Stepped-up basis before and after repeal.	retained. Provision expires in 2026 and tax reverts to current law exemption amount indexed for inflation.
Historic Rehabilitation / New Markets Tax Credits	Available	Repealed	New Markets Tax Credit is retained. The 20% historic remains, but can only be claimed over five years. The 10% historic credit for pre-1936 buildings is repealed.