

THE TAX CUTS AND JOBS ACT AND COMMERCIAL REAL ESTATE

By Erin Stackley

In December, Congress passed H.R. 1, the Tax Cuts and Jobs Act, which President Trump signed into law. This legislation makes broad changes to the U.S. tax code, including doubling the standard deduction, and permanently lowering the corporate income tax from 35% to 21%. Among those changes are several that will impact commercial real estate specifically and real estate practitioners generally.

First, there is something notable that the law does not change: the treatment of Section 1031 Like-Kind Exchanges for real property. While the provision was repealed for personal property, it was kept intact for real estate. This follows several years of advocacy by the National Association of REALTORS® (NAR), pushing to educate Members of Congress on what a like-kind exchange is, why it is important to the real estate industry, and how it benefits the U.S. economy as a whole. Its retention in the Tax Cuts and Jobs Act is a huge win for commercial real estate.

Another victory for commercial real estate is the bill's retention of capital gains treatment for carried interest, which lawmakers from both parties proposed changing to the much higher ordinary income tax rates. The final bill preserves capital gains treatment for carried interests, but makes a slight adjustment:

properties must be held for at least three-years to qualify for it.

During the debate in Congress over the tax reform bill, there was concern over its impact on small businesses, resulting in the inclusion of a 20% deduction for "qualified business income," including pass-through businesses and independent contractors. It came with a caveat though: the deduction is limited to non-personal service businesses. A "personal service business" includes "any business where the main asset of the business is the reputation or skill of one or more of its employees or owners" - thus it is likely that real estate agents and brokers will be considered a personal service business, and so would not normally qualify for the deduction.

However, NAR was able to help get a major exception included, which will make it possible for many real estate professionals to take advantage of the deduction. It allows pass-through businesses and independent contractors to claim the full deduction (regardless of whether they are a personal service business or not) if their taxable income is below \$157,500 (filing singly) or \$315,000 (filing jointly). Above those thresholds, the deduction is phased out over an income range of \$50,000 for singles and \$100,000 for

couples. It should be noted that there are still many questions as to how the IRS and the Treasury are going to implement this 20% deduction provision, we are awaiting clarification and guidance from the IRS and the Treasury on it. Based on what that guidance says, the application of this provision may significantly change.

Finally, although H.R. 1 did not address "tax extenders" - those temporary tax provisions that Congress typically extends each year - the budget compromise passed in February to fund the government through March 23 does. In it, the 179D Energy Efficient Commercial Building Deduction, which expired at the end of 2016, is retroactively extended through 2017. This means that commercial property owners can claim that deduction on the taxes they file in 2018 for 2017, but it will need another extension to cover any years after that.

As the Tax Cuts and Jobs Act implementation continues, NAR will keep advocating for clarifications and guidance that help real estate professionals and support the real estate industry. For more information on NAR's advocacy and the tax reform bill overall, please visit www.nar.realtor/tax-reform. ▾