

2025 Tax Reconciliation Legislation
House Ways & Means Committee Proposal

Summary

The House Ways and Means Committee on May 12 released its version of tax reconciliation legislation scheduled for markup May 13. If enacted, the \$3.7 trillion package would represent a significant win for multifamily housing, as it largely retains current law and adds some enhancements beneficial to our industry. It would make permanent expiring ordinary income tax rates; enhance and make permanent the tax deduction for qualifying pass-through income (Section 199A); provide permanent estate tax relief; offer 100 percent bonus depreciation and looser limits on interest deductibility; enhance the Low-Income Housing Tax Credit and Opportunity Zones; and omit onerous revenue raisers targeting carried interest or, generally, the deductibility of multifamily-related business state and local taxes paid by multifamily industry taxpayers.

The House Ways and Means Committee is scheduled to mark up the bill Tuesday, May 13, at 2:30 pm. This is the first step in a long process. Once the Committee completes its consideration of the tax bill, it will be packaged with additional legislation reported by other House committees to comply with the reconciliation directive included in the Concurrent Resolution on the Budget for Fiscal Year 2025. The reconciliation package will then head to the full House for consideration before it moves to the Senate. NMHC will continue to be engaged throughout the process to ensure that multifamily housing providers' priorities remain part of the final package.

Here is a preliminary description of the key pieces of the House Ways and Means Committee's proposal.

Tax Rates and Section 199A Deduction for Qualifying Pass-Through Income

The House Ways and Means Committee's proposal would significantly benefit the multifamily industry regarding the current-law ordinary income tax rate structure and the deduction for qualifying pass-through income set to expire at the end of 2025. Specifically, it would:

- Make permanent current-law ordinary income tax rates, including the top 37 percent tax rate;
- Increase to 23 percent (from 20 percent) and make permanent the tax deduction for qualifying pass-through income and REIT dividends (commonly referred to as Section 199A), effectively reducing the top tax rate on qualifying business income to 28.49 percent before accounting for the limitation on itemized deductions described below.

Estate Tax

The House Ways and Means Committee's proposal provides significant estate tax relief to multifamily participants. It would increase the estate tax exemption amount to \$15 million for tax years beginning after 2025 and index that amount to inflation for subsequent years.

The present-law estate tax exemption amount is \$13.99 million (\$27.98 million per couple) and set to be cut in half starting in 2026.

Revenue Raising Provisions—Carried Interest, Restrictions on Deductibility of Business State and Local Taxes, Excess Business Losses and Limitation on Itemized Deductions

Multifamily participants have been concerned that lawmakers would include revenue-raising provisions that would have made it more difficult to develop and operate multifamily housing. In particular, we urged lawmakers not to tax carried interest at ordinary income tax rates or to restrict the deductibility of business state and local taxes. The House Ways and Means Committee proposal:

- Retains the current-law tax treatment of carried interest.
- Generally does not restrict the Federal deductibility of multifamily-related state and local income and property taxes paid by multifamily business owners.

The House Ways and Means Committee proposal, however, does include notable revenue-raising provisions regarding excess business losses and itemized deductions. It would:

- Make permanent the limitation on excess business losses by noncorporate taxpayers that is currently effective for taxable years beginning before 2029. In addition, it requires that excess business losses disallowed in taxable years beginning after 2024 be fully taken into account in determining a taxpayer's excess business loss in subsequent years.
- Limit itemized deductions taxpayers in the 37 percent tax bracket may take to \$0.35 for each \$1 of itemized deductions as opposed to today's \$0.37

Bonus Depreciation

The House Ways and Means Committee proposal would provide 100 percent bonus depreciation from January 20, 2025, through 2029 to enable taxpayers to deduct the full cost of certain capital investments with a class life of 20 years or less (e.g., equipment and machinery) included in multifamily buildings. Under current law, 40 percent and 20 percent bonus depreciation is available in 2025 and 2026, respectively.

Small Business Expensing

Under current law, small businesses may expense \$1.25 million in qualifying property as opposed to having to recover costs through depreciation. The limit is reduced by the amount by which investment exceeds \$3.13 million. Both amounts are adjusted annually for inflation. The House Ways and Means Committee's proposal would increase the expense limit to \$2.5 million and the phase-out threshold to \$4 million in 2025 and increase those amounts by inflation in subsequent years.

Deductibility of Business Interest

The House Ways and Means Committee proposal would provide additional relief from limits imposed on the deductibility of business interest, potentially enabling multifamily firms to

avoid having to elect out of these limits in exchange for a longer cost recovery period on multifamily buildings.

The *Tax Cuts and Jobs Act* limited the deductibility of business interest while simultaneously providing temporary and partial relief from those limits. The provision in effect from 2018 through 2021 used a broader definition of earnings (EBITDA) for purposes of the rule that limits deductible business interest to 30 percent of earnings. Since 2022, a more restrictive definition (EBIT) has artificially reduced earnings by certain accrued, non-cash expenses: depreciation and amortization.

The House Ways and Means Committee proposal reinstates the original EBITDA definition and extends it from 2025 through 2029. Reinstating the provision will allow many real estate businesses to deduct fully their business interest without operating under separate and more restrictive rules that allow a real property trade or business to fully deduct business interest in exchange for longer cost recovery periods (i.e. 30-year depreciation of buildings as opposed to 27.5 years).

Low-Income Housing Tax Credit

The House Ways and Means Committee proposal would augment Low-Income Housing Tax Credit authority by 12.5 percent between 2026 and 2029, as well as reduce the private activity bond financing threshold to 25 percent from 50 percent in 2026 through 2029, which is required to receive the full amount of 4 percent LIHTCs. The proposal would also provide a 30 percent basis boost for buildings that are located in Indian or rural areas and placed in service after 2025 and before 2031.

Opportunity Zones

The House Ways and Means Committee's proposal would modify the current-law tax treatment of Opportunity Zone. Among other things, it would:

- Create a second round of Opportunity Zones with at least one-third of designated zones being in rural areas;
- Allow taxpayers to invest up to \$10,000 of post-tax ordinary income into qualified opportunity funds.
- Provide a 10 percent step-up in basis for capital gains invested in traditional opportunity funds for at least five years and a 30 percent step-up in basis for capital gains invested in rural qualified opportunity funds for at least five years. Recognition of deferred capital gains would occur on December 31, 2033.
- Reduce the substantial improvement threshold to 50 percent (from 100 percent) in rural areas.

The second round of Opportunity Zones will be effective from January 1, 2027, through December 31, 2033.

Energy Tax Incentives

The House Ways and Means Committee's proposal would roll back certain energy tax incentives that benefit the multifamily industry. Specifically, it would:

- **Faster Phase-Out of Clean Electricity Production Credit (IRC Section 45Y) and the Clean Electricity Investment Credit (IRC Section 48E):** The *Clean Electricity Production Credit* and the *Clean Electricity Investment Credit* take effect in 2025 and are available to spur the production of zero carbon electricity and the construction of facilities producing zero carbon electricity. Both credits will begin to phase down in late 2032 or when the electric power sector emits 75 percent less carbon than it does in 2022. These new technology-neutral credits can include bonus-credit amounts if the project meets domestic-content requirements, is located in certain areas, or benefits certain communities.

The Ways and Means Committee proposal would eliminate both credits in 2032 (with a 20 percent credit reduction in 2029, 40 percent credit reduction in 2030, and 60 percent credit reduction in 2031) and repeal the transferability of these credits for facilities for which construction begins two years after the date of enactment of the provision.

- **Repeal of New Energy Efficient Home Credit (IRC Section 45L):** The proposal repeals the New Energy Efficient Home Credit that is otherwise effective through 2032. The repeal is effective for homes acquired after December 31, 2025, or December 31, 2026, in the case of any home for which construction began before May 12, 2025.

For multifamily units acquired after 2022, current law provides a base credit of \$500 for units that participate in the ENERGY STAR Multifamily New Construction Program while meeting both national and regional program requirements. A base credit of \$1,000 is available to multifamily homes certified as zero energy ready under the Department of Energy Zero Energy Ready Home Program. Bonus credit amounts totaling five times the base credit are available for taxpayers meeting applicable prevailing wage requirements. Finally, a provision is included so that the credit may be better used in conjunction with the Low-Income Housing Tax Credit.