

SUMMARY OF KEY PROVISIONS OF HOUSE BILL VS. SENATE BILL FOR REAL ESTATE FINANCE INDUSTRY

Provision	Current Law	House Bill	Senate Bill	Notes
Corporations/Businesses				
Corporate Tax Rates	Four brackets: 15%, 25%, 34% and 35%.	Flat 20% tax rate.	Flat 20% tax rate. The bill reduces the dividends received deductions to reflect the lower corporate tax rate	Senate retains House provision. However, the Senate provision would delay the corporate rate cut to start on 1/1/2019 while the House would make it effective on 1/1/2018.
Tax Rates for Pass-through Entities	No entity level tax. Individual owner or shareholder is subject to individual tax on business income.	A portion of net income distributed by a personal services pass-through entity to an owner or shareholder may be treated as “business income” subject to a maximum rate of 25 percent, instead of ordinary individual income tax rates. Applies differently under different business models (e.g., active vs. passive business activity).	Provides a deduction equal to the lesser of 23% the taxpayer’s “qualified business income” or 50% of the W-2 wages with respect to the taxpayer’s qualified trade or business. The W-2 wage portion does not apply to a “small business with income that does not exceed \$250,000. The deduction does not apply to a “specified service” trade or business; except the income of such business does not exceed \$300,000 A specified service trade or business is defined to include a financial services trade or business. This provision sunsets on 12/31/25.	Under the House version, a maximum 25% rate would apply to certain dividends from a real estate investment trust (REIT) and patronage dividends from cooperatives. Certain personal services businesses would not be eligible for this lower business tax rate. ***Regardless of which provision survives, we will work with the IRS and Treasury to obtain clarification on how this provision would apply to mortgage lenders and brokers organized as pass-through entities.
AMT	Corporations are subject to the AMT, subject to an exemption amount (\$40,000). The corporate exemption amount is phased out based on certain income levels.	Eliminates the AMT	Does not eliminate the AMT, but increases the phase-out of exemption amounts.	This provision will result in many more corporate AMT taxpayers and severely restrict use of general business credits

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Limitation on Losses from Pass-through Entities	Owners of pass-through entities allowed to deduct active losses from a trade or business	No provision	Owners of pass-through businesses are not permitted to deduct more than \$250K (\$500K for joint filers) of active losses from the pass-through business. Losses that are disallowed in a particular year may be carried forward as NOLs This provision sunsets after 12/31/2025	This provision would limit deduction for active losses from a pass-through business
Taxable year of inclusion	An accrual taxpayer is permitted to defer recognition of income in certain cases for tax purposes – even though such income has been recognized for GAAP purposes (thereby creating a temporary book/tax difference).	No provision	Amends current law by requiring that an accrual taxpayer that recognizes income for GAAP must also recognize income for tax. Excludes income relating to mortgage servicing contract.	The Senate version amends the timing of income recognition for any accrual taxpayer who files a financial statement. Specifically clarifies that the amendment does not impact: (i) taxpayer that does not prepare a financial statement; and (ii) current law treatment of the timing of income recognition for Mortgage Servicing
Individuals				
Individual Tax Rates	Seven brackets: 10%, 15%, 25%, 28%, 33%, 35% and 39.6%.	Shrink to four brackets: 12%, 25%, 35% and 39.6%.	Retains and adjusts current law seven brackets: 10%, 12%, 22%, 24%, 32%, 35%, and 38.5%. The provision sunsets on 12/31/25	Both versions repeal the deduction for personal exemptions The House bill includes a 6% surcharge on income of high earners. The Senate version does not include a surcharge
Individual Small Business Rate		Business income of an individual owner of a small passthrough business will be subject a lower rate of 9%. This rate will be applied to the first \$37,500 (\$75,000 for joint filers) of income for a business with less than \$75,000 (\$150,000 for joint filers) total income. As the business income exceeds \$150,000, the benefit of the 9% rate is reduced, and it is fully phased out at \$225,000.	23% deduction available to all small passthrough businesses, including a specified service small business owner with income under \$\$200,000. This provision sunsets on 12/31/25	Under the House bill, businesses of all types are eligible for the 9% rate, which would apply to all business income up to the \$75,000 level. The 9% rate is phased in over five taxable years, such that the rate for 2018 and 2019 is 11 percent, the rate for 2020 and 2021 is 10 percent, and the rate for 2022 and thereafter is 9 percent.

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Standard Deduction	For 2017, a standard deduction of \$6,350 for single filer, \$9,350 for head of household, and \$12,700 for married filers.	The standard deduction would be increased to \$24,000 for joint filers and \$12,000 for individual filers. Single filers with at least one qualifying child could claim a standard deduction of \$18,000.	The standard deduction would be increased to \$12,000 for individual filers and \$18,000 for head of household. The deduction for head of household continues to be 200% of dollar amount applicable for individual filers. The provision sunsets on 12/31/25	In lieu of taking the applicable standard deductions, an individual may elect to claim itemized deductions.
Deduction For State and Local Taxes	Allows deduction for state and local taxes.	Eliminates all deduction for state and local tax; but retains deduction for state and local property tax of up to \$10,000.	Eliminates deduction for all state and local tax, but retain a maximum \$10,000 deduction for state and local real property taxes. This provision sunsets after 12/31/25	Senate version mirrors House version.
Single-Family				
Mortgage Interest Deduction	Deductible on loans up to \$1,000,000.	Retains current law for existing mortgages and refinancing. Reduces the deduction cap from \$1 million to \$500,000 for mortgages “incurred” after November 2, 2017. Special rules for purchase contracts entered into before Nov. 2, and completed before April 1, 2018.	Retains current law on the cap for acquisition indebtedness. Does not change the definition of “qualified residence interest”	Under the House bill, mortgage must be for the taxpayer’s primary residence. Also effectively eliminates the deduction for second or vacation homes. The Senate version essentially retains the deduction for second home
Interest Deduction on Home Equity Loan	Allows interest deduction for home equity debt up to \$100,000.	Eliminates the provision.	Eliminates the provision. This provision sunsets on 12/31/25	
Deductibility of MI premiums and debt forgiveness	MI deductibility and debt forgiveness have expired for current tax year.	Does not reinstate the deduction for mortgage insurance premium or exclusion of tax on mortgage debt forgiveness.	Does not reinstate the deduction for mortgage insurance premium or exclusion of tax on mortgage debt forgiveness.	
Capital Gains Tax Exclusion for Home Sale	\$250,000 excluded for single filer; \$500,000 for married filer.	Retains current law; but provides a phase out as incomes rise. A taxpayer’s benefit is reduced by the amount the AGI exceeds the limit. Taxpayer must have owned and lived in the home for 5 years of the previous 8 years,	Retains House version, but does not include AGI phase out like the House version. Provides an exception for a taxpayer who does not meet the requirements because of change of	Must be taxpayer’s principal residence. The Senate version also includes the House version’s “5 out of 8 years” requirement. In addition, the Senate version grandfathers any

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		compared to 2 of the past 5 years under current law.	employment, health, unforeseen circumstances, or, other reasons allowed by regulations. Such a taxpayer is allowed to exclude a fraction of the \$500,000 that is equal to the fraction of the 5 years that the ownership and use requirements are met. This provision sunsets after 12/31/25	sale for which there was a written binding contract in effect before 1/1/18.
Alternative Minimum Tax	AMT income exemption amount: \$78,750 for joint filers; \$50,600 for single filers; and \$39,375 for married filing separate.	Eliminates the AMT	Increases the exemption amount: \$109,400 for joint filers; \$70,300 for single filers; and \$54,700 for married filing separate.	Unlike the House version, the Senate bill does not eliminate the AMT, but increases the income exemption amounts.
Commercial/Multifamily				
Business Interest Deduction	Generally allows deduction for all businesses.	Limits business interest deductibility for all businesses. Excludes real property trade or business, which includes any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.	Limits business interest deduction in general, and excludes certain trades or businesses as well as any taxpayer with less than \$15 million gross receipts (under section 448(C) test). A real property trade or business may elect to be excluded from the application of the limitation on business interest deduction	Under both versions, the deduction is limited to 30% of adjustable taxable income. Immediate expensing is not available for businesses that are not subject to the limitation – such as a real property trade or business. In general, any amount of business interest not allowed in a particular year may be carried forward to the succeeding year. This is not applicable to a partnership.
Like Kind Exchange	Allows deferral of gain on like kind exchange of property.	Retains deferral of gain on like kind exchange of real property.	Retains deferral of gain on like kind exchange of real property that is not held primarily for sale.	Deferral of gain on like kind exchange of personal property is eliminated. Senate version specifically limits application to real property that is not held primarily for sale.

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LIHTC	Allows a dollar for dollar tax credit for investments in LIH projects.	Retains current law.	Retains current law	Neither bill address the impact of lower corporate rates or other changes that could reduce the value of tax credits to their holders.
Private Activity Bonds and Mortgage Revenue Bonds	Interest on both governmental bonds and private activity bonds (PABs) is excluded from gross income (and thus exempt from tax).	Interest on newly issued (after December 31, 2017) PABs would be included in income and thus subject to tax.	The Senate preserves tax exemption for interest on PABs, but repeals the tax exempt treatment of advance refunding bonds.	The House version eliminates that tax exempt status of PABs – and invariably, mortgage revenue bonds.
Carried Interest	Taxed as long term capital gains if held for more than one year	Requires a 3 year holding period to receive long term capital gains treatment	Requires a 3 year holding period. The amount by which the long term capital gains held for more than one year exceeds the long term capital gains held for more than 3 years will be treated as short term capital gain.	Both generally require a 3-year holding period requirement to get capital gains treatment.
Cost Basis Reporting	Generally requires specific identification of basis of stock acquired on different dates or at different prices. Without identification, if shares are sold, the shares sold are deemed to be drawn from the earliest acquired (the “first-in-first-out rule”).	No provision	Eliminates the requirement for specific identification. In effect, the cost of any specified security sold, exchanged, or otherwise disposed of on or after January 1, 2018, will be determined on a first-in first-out basis except to the extent the average basis method is otherwise allowed (as in the case of stock of a RIC).	The Senate version is intended to simplify current law. Under current law, a taxpayer is allowed to elect to sell shares bought at the highest price first in order to minimize the capital gains tax. The change would limit a taxpayer’s ability to sell the highest priced shares if such shares were not bought first.
Net Operating Losses	NOLs that cannot be deducted in the year generated may be carried back two years and carried forward 20 years to offset taxable income in such years.	Taxpayers would be able to deduct an NOL carryover or carryback only to the extent of 90% of the taxpayer’s taxable income – conforming to the current-law AMT rule. All carrybacks would be repealed. There would be a special one-year carryback for small businesses and farms in the case of certain casualty and disaster losses.	Taxpayers are allowed to deduct the lesser of aggregate of net NOL carry overs plus net carrybacks OR 90% taxable income. Changes to 80% of income after 12/31/22. NOL carryback is repealed, whereas, NOL can be carried forward indefinitely.	The current AMT rules provide that a taxpayer’s NOL deduction may not reduce the taxpayer’s alternative minimum taxable income by more than 90 percent.

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