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Key Provisions of the Tax Cuts Affecting Real Estate and the Title Industry

Tax Rate Reductions

- Maintains seven individual income tax brackets, but lowers most rates: 10%, 12%, 22%, 24%, 32%, 35%, and 37%.
- The final bill retains the current-law maximum rates on net capital gains (generally, 15% maximum rate but 20% for those in the highest tax bracket; 25% rate on "recapture" of depreciation from real property).
- Lowers the corporate tax rate to 21% (from 35%).

Mortgage Interest Deduction

The final bill reduces the limit on deductible mortgage debt to $750,000 for new loans taken out after Dec. 14, 2017. Current loans of up to $1 million are grandfathered and are not subject to the new $750,000 cap. Neither limit is indexed for inflation.

Homeowners may refinance mortgage debts existing on Dec. 14, 2017, up to $1 million and still deduct the interest, so long as the new loan does not exceed the amount of the mortgage being refinanced.

The final bill repeals the deduction for interest paid on home equity debt through Dec. 31, 2025. Interest is still deductible on home equity loans (or second mortgages) if the proceeds are used to substantially improve the residence.

Interest remains deductible on second homes, but subject to the $1 million/$750,000 limits.

Deduction for State and Local Taxes

The legislation allows individuals to deduct an aggregate of $10,000 of state and local government taxes (SALT) for property, sales or income tax. Previous bills limited the SALT deduction to only property taxes. This $10,000 limit applies for both single and married filers and is not indexed for inflation.

The final bill also specifically precludes the deduction of 2018 state and local income taxes prepaid in 2017.

Standard Deduction

Nearly doubles the standard deduction from $6,350 ($12,700) under current law to $12,000 ($24,000) for individuals (married couples).

Alternative Minimum Tax

Retains the Alternative Minimum Tax (AMT), but increases the amount of income exempt for individuals. Repeals the corporate AMT.

Like-Kind Exchanges

The final bill retains the current Section 1031 Like Kind Exchange rules for real property. It repeals the use of Section 1031 for personal property, such as art work, auto fleets, heavy equipment, etc.

Carried Interest

The final bill includes the House and Senate language requiring a three-year holding period to qualify for current-law (capital gains) treatment.

Pass-Through Relief

The legislation creates a new tax deduction of 20 percent for pass-through businesses. For taxpayers with incomes above certain thresholds, the 20 percent deduction is limited to the greater of: (a) 50% of the W-2 wages paid by the business, or (b) 25% of the W-2 wages paid by the business, plus 2.5% of the unadjusted basis, immediately after acquisition, of depreciable property (which includes structures, but not land). REIT dividends and distributions from publicly traded partnerships are not be subject to the wage restriction. Estates and trusts are eligible for the pass-through benefit. Income from certain specified services businesses is ineligible (e.g., health, law, financial services, etc.).

Example. A business purchases an office building for $10 million ($7 million attributable to the structure, $3 million attributable to the land). The building generates annual rental income of $500,000. The maximum allowable pass-through deduction would be $100,000 (20% of $500K). Even if the business paid no wages, the business would qualify for the full deduction because 2.5% of $7 million is $175,000. For a taxpayer subject to the maximum 37% tax rate, the rental income would be taxed at an effective rate of 29.6%.

Affordable Care Act

Eliminates individual mandate penalty associated with the Affordable Care Act (ACA) beginning in 2019.

Source: ALTA.org