



**Trump Tax Law Hurts Homeowners
and Helps Real Estate Developers**

Prepared for Ranking Member Elijah E. Cummings

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EXECUTIVE SUMMARY

Homes are often the largest source of savings for American families, and homeowners generally build equity with each mortgage payment they make. Since Congress enacted a federal income tax more than a century ago, homeowners have been allowed to deduct interest on their home loans, as well as on property taxes on their homes.

On December 22, 2017, President Donald Trump signed the Tax Cuts and Jobs Act. The new tax law imposes significant new financial penalties on American homeowners across the country, while essentially using the funds raised by these tax increases to help pay for over \$60 billion in lucrative new tax breaks for real estate developers. No Democratic Members voted in favor of the bill.

Under the new tax law, homeowners are now prohibited from deducting interest on home equity loans if they use those funds for unexpected medical emergencies, to pay for college education, or for any purpose other than home improvement. This retroactive provision applies even to future interest payments on loans taken out by homeowners in the past. Homeowners also are no longer allowed to deduct property taxes on their homes to the extent that state and local taxes, including property taxes, are more than \$10,000.

This staff report was prepared by the Democratic staff of the House Committee on Oversight and Government Reform at the request of Ranking Member Elijah E. Cummings. It summarizes the specific effects of the new tax law on homeowners across the United States based on multiple sources of data. The report finds:

- **None of the approximately 75 million homeowners in the United States will be allowed to claim deductions for interest on home equity loans they use for any purposes other than home improvement.**
- **Beginning in 2018, about 10 million homeowners throughout the United States with existing home equity loans will not be allowed to claim full home equity interest deductions as they did in the past.**
- **Approximately 12.5 million homeowners in the United States no longer will be allowed to deduct their full property taxes.**

In contrast, the new tax law grants commercial real estate developers significant tax breaks worth billions of dollars. Real estate developers are now allowed to take new deductions on pass-through income, pay dividends that are taxed at reduced rates, take advantage of an exemption from a provision that otherwise limits businesses from deducting interest, and utilize another exemption to avoid paying taxes on property exchanges.

- **New estimates from the Joint Committee on Taxation conclude that these tax giveaways to real estate developers total a staggering \$66.7 billion in lost revenue over ten years. Just next year, the windfall for real estate developers due to these four tax changes will total nearly \$3.7 billion.**

METHODOLOGY

This report is based on data from the following sources:

- “2016 American Community Survey” from the U.S. Census Bureau;
- “2016 Survey of Consumer Expectations” from the Federal Reserve Bank of New York;
- “2016 Survey of Consumer Finances” from the Federal Reserve Board of Governors; and
- “2015 Individual Income Tax Returns: Selected Income and Tax Items by State, ZIP Code, and Size of Adjusted Gross Income” from the Internal Revenue Service.

Estimates of the impacts on homeowners with property taxes are based on data from the Institute on Taxation and Economic Policy. Estimates of the impacts on homeowners with home equity loans are based on a methodology from Co-Equal.

This report does not seek to determine whether a specific family will pay more or less under the new tax law. That is a fact-specific determination that families will have to make each year based on many factors, including how much income they make, where they live, and the new tax law’s other changes, such as additional cost increases caused by changes to the Affordable Care Act.

I. NEW FINANCIAL PENALTIES ON AMERICAN HOMEOWNERS

Homes are often the largest source of savings for American families, and home equity loans are often the most affordable way for these families to obtain credit. In addition to taking out primary mortgages, homeowners generally may borrow against the equity in their homes by refinancing their primary mortgages to access additional funds, taking out second mortgages, or obtaining Home Equity Lines of Credit (HELOCs) to withdraw funds up to certain limits.

Funds from these loans may be used for a wide range of purposes, including covering unexpected medical expenses, paying for children to go to college, or consolidating or reducing interest rates on other more costly loans.

On December 20, 2017, the United States Senate approved the tax bill by a vote of 51 to 48, with Democrats opposing it and Republicans supporting it.¹ The same day, the House of Representatives approved the bill by a vote of 224 to 201, with Democrats opposing it and all but 12 Republicans supporting it.²

The new tax law made several changes to existing tax provisions covering homeowners:

- ***Limited the Home Equity Interest Deduction:***
For over one hundred years, homeowners have been allowed to deduct interest on their home loans. Before the new Republican tax law was passed, homeowners were allowed to deduct interest on home equity loans of up to \$100,000. The new Republican tax law prohibits homeowners from deducting interest on loans of any amount if they use the funds for purposes other than home improvement.
- ***Limited the Property Tax Deduction:***
Homeowners used to be allowed to deduct property taxes as part of the deduction for state and local taxes. The new Republican tax law now sets a limit of \$10,000 for the amount homeowners may deduct in combined state and local taxes, including property taxes.
- ***Capped the Size of Mortgages with Interest Deductions:***
The new Republican tax law reduces the size of the initial principle balance of mortgages on which homeowners may deduct interest from \$1,000,000 to \$750,000.

In addition to these changes, the existing tax deduction on premiums that homeowners pay on mortgage insurance is set to expire. Mortgage insurance is generally required for homebuyers paying less than 20% down. In 2017, these premiums were fully deductible for homeowners with incomes below \$100,000, but they will not be deductible in 2018.

II. ESTIMATED EFFECTS OF REPUBLICAN TAX LAW ON HOMEOWNERS ACROSS THE UNITED STATES

The new tax law will have a significant impact on homeowners throughout the country.

Across the United States, approximately 74,881,000 homes are owner-occupied, and approximately 13,662,000 of these homeowners have home equity loans. Approximately 10,022,000 of these homeowners with home equity loans (about 73%) used proceeds from these loans for purposes other than home improvement. None of these 10,022,000 homeowners will be allowed to claim full interest deductions on payments made after December 31, 2017.

For example, if parents refinanced their mortgage or took out a home equity loan in 2016 to cover medical bills for a loved one or college tuition for a child, they would have had every expectation that they would be able to continue deducting interest on those loan payments well into the future. Under the new Republican tax bill, they are now prohibited from doing so.

If homeowners itemized deductions under the previous law and used home loan funds for a purpose other than home improvement, the new tax law significantly increases their after-tax interest rate. For families who still have years—if not decades—remaining to pay off loans they took out in the past, this new retroactive penalty raises serious concerns. If their banks had imposed retroactive increases on their interest rates, there is no doubt that many of these families would have sought immediate redress. In this case, however, these retroactive changes were imposed by congressional Republicans and President Trump.

Finally, under prior law, about 39,765,000 homeowners in the United States could deduct their property taxes, claiming an average deduction of about \$4,992. Under the new tax law, however, about 12,456,000 homeowners across the United States will lose the ability to deduct the full amount of their property taxes because their combined state and local tax deductions are more than \$10,000.

III. LUCRATIVE NEW TAX BREAKS FOR REAL ESTATE DEVELOPERS

In contrast to American homeowners, real estate developers are rewarded richly under the new tax law. According to new estimates issued by the Joint Committee on Taxation, four new tax breaks will result in a stunning \$66.7 billion windfall for real estate developers over the next ten years, including lost taxpayer revenue of \$3.7 billion in 2019 alone.

These new tax breaks include:

- ***\$30 Billion Windfall for New Pass-Through and Real Estate Dividend Deductions:*** The tax law creates a new deduction for 20% of pass-through “qualified business income.” During the House-Senate conference, a mysterious break for commercial real estate companies was inserted into the final bill to allow developers to use an alternative test using the purchase price of their depreciable real property in order to qualify for the deduction, which in turn could reduce the top rate from 37% to 29.6% for pass-through income from real estate development.

In addition, before 2003, corporate dividends were taxed at ordinary income rates, leading the Bush Administration to decry this as “double taxation” because these dividends were taxed at both the corporate and individual levels. In 2003, Congress created a lower tax rate for “qualified dividends” paid by corporations previously taxed at the corporate level. Dividends from real estate investment trusts (REITs)—which contain portfolios of real estate—were exempted from the lower rate because they do not pay corporate taxes on shareholder dividends. The new tax law now provides a 20% deduction for qualified dividends paid by these trusts—despite the fact that there is no double taxation—and there is now a 29.6% effective federal income tax rate on REIT dividends for taxpayers in the 37% bracket.

According to estimates from the Joint Committee on Taxation, the combined effects of these two tax breaks amounts to an estimated \$28.9 billion in lost revenue over ten years.

- ***\$16 Billion Windfall for Real Estate Exemption from Limitations on Interest Deductions:*** The new tax law imposes a 30% limitation on interest deducted by large businesses, which may disadvantage domestic businesses that utilize debt financing. However, the new law included a special exemption for real estate developers so they can continue to deduct this interest. According to the Joint Committee on Taxation, this provision results in an estimated \$16 billion windfall over ten years.
- ***\$22 Billion Windfall for Real Estate Exemption from Like-Kind Exchange Repeal:*** The new tax law repealed a provision allowing businesses to avoid capital gains taxes through “like-kind” exchanges of business assets. However, the real estate industry was exempted from this repeal. Like-kind exchanges are used by real estate investors to defer payment of capital gains on property by

deferring them to other properties without recognizing transactions that would make them taxable. According to the Joint Committee on Taxation, this exemption costs taxpayers an estimated \$21.7 billion in lost revenue over ten years.

Multiple experts and commentators have highlighted the windfall that real estate developers are now receiving under the new tax law:

- Steven M. Rosenthal of the Urban-Brookings Tax Policy Center, stated: “If enacted, the commercial real-estate industry will have hit the jackpot.”³
- David Miller, a tax partner at Proskauer Rose LLP, stated that the new tax rate for REITs is “unprecedented.”⁴
- Jim Tankersley, writing in the *New York Times* about the new exemption for real estate from the repeal of like-kind exchanges, stated: “by adding a single word to the newly written tax code—‘real’—the law now allows only real estate swaps to qualify for that special treatment.”⁵
- Kenneth Weissenberg, the chair of real estate services at the accounting firm EisnerAmper, stated: “Real estate is a big-time winner.”⁶
- James Repetti, a tax professor at Boston College Law School, stated: “This is a windfall for real estate developers like Trump.”⁷

CONCLUSION

President Trump and Republicans in Congress made a clear choice when they enacted the tax bill last year. They chose to take away longstanding tax deductions that American families have relied on for decades while at the same time creating \$66 billion in new tax breaks for real estate developers.

Although some may reap large financial windfalls as a result of the changes in the new tax law, many American families will be penalized despite their ongoing efforts to faithfully invest in their single biggest asset—their home.

ENDNOTES

¹ *How Every Senator Voted on the Tax Bill*, New York Times (Dec. 19, 2017) (online at www.nytimes.com/interactive/2017/12/19/us/politics/tax-bill-senate-live-vote.html).

² *House Passes Tax Bill, Again and with Fixes, Sending Final \$1.5 Trillion Package to Trump*, USA Today (Dec. 21, 2017) (online at www.usatoday.com/story/news/politics/2017/12/20/house-set-pass-tax-bill-again-and-fixes-sending-final-1-5-trillion-package-trump/968722001/).

³ *Tax Bill a Boom to Commercial Real Estate Owners*, Dow Jones Newswires (Dec. 17, 2017) (online at www.foxbusiness.com/features/tax-bill-a-boom-to-commercial-real-estate-owners).

⁴ *REIT Investors to Gain from Tax Legislation*, Wall Street Journal (Dec. 19, 2017) (online at www.wsj.com/articles/reit-investors-to-gain-from-tax-legislation-1513725520).

⁵ *A Curveball from the New Tax Law: It Makes Baseball Trades Harder*, New York Times (Mar. 19, 2018) (online at www.nytimes.com/2018/03/19/us/politics/baseball-tax-law-.html).

⁶ *How Real Estate Investors Can Cash-in Under New Tax Law*, San Francisco Chronicle (Jan. 11, 2018) (online at www.sfchronicle.com/business/networth/article/How-real-estate-investors-can-cash-in-under-new-12491965.php).

⁷ *Trump, Real Estate Investors Get Late-Added Perk in Tax Bill*, Bloomberg (Dec. 17, 2017) (online at www.bloomberg.com/news/articles/2017-12-18/trump-real-estate-investors-get-last-minute-perk-in-tax-bill).