NMHC National Multi Housing Council®

NAA National Apartment Association

Issue Fact Sheet

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The American Taxpayer Relief Act of 2012 and the Multifamily Industry

Background

On Jan. 1, 2013, Congress addressed the "fiscal cliff" by enacting the *American Taxpayer Relief Act of 2012*. The act permanently extends the 2001 and 2003 Bush-era tax cuts, affecting ordinary and capital income rates for married taxpayers earning less than $450,000 and single taxpayers earning less than $400,000. In addition, it permanently extends the estate tax with a $5 million exemption and 40 percent top rate and provides relief from the alternative minimum tax. Finally, the act renews several additional business tax incentives through 2013.

Although policymakers are likely to continue their calls for fundamental tax reform, the act provides owners, operators and managers of multifamily housing some level of certainty regarding the tax code. By removing the threat that the tax code could change radically, the legislation will allow the industry to make key decisions regarding the construction, rehabilitation and management of buildings.

Here is a look at the key provisions contained in the act and their effect on the multifamily industry:

2001 and 2003 Bush Tax Cuts

With regard to taxes on ordinary and capital income, the act includes the following provisions:

- ***Income Tax Rates:*** The act permanently extends tax rates for married taxpayers earning less than $450,000 and single taxpayers earning less than $400,000. Taxpayers earning incomes over these thresholds will face a 39.6 percent tax rate instead of a 35 percent rate.

  Married taxpayers earning more than $250,000 and single taxpayers earning more than $200,000 should note that an additional 0.9 percent tax will apply to wage income as a result of health care tax legislation enacted in 2010.

Tax Rates on Ordinary Income	
2012	**2013**
10%	10%
15%	15%
25%	25%
28%	28%
33%	33%
35%	35%
	39.6%

- ***Capital Gains and Dividends:*** The act permanently increases to 20 percent the tax rate applicable to capital gains and dividends received by married couples earning more than $450,000 and single filers earning more than $400,000. The 15 percent rate applicable to capital gains and dividends is permanently extended for taxpayers earning under these thresholds but at or above the 25 percent income tax bracket. The 0 percent rate on capital gains and dividends is permanently extended for taxpayers in the 15 percent income tax bracket and below.

  Married taxpayers earning more than $250,000 and single taxpayers earning more than $200,000 should note that an additional 3.8 percent tax will apply to capital gains and dividends derived from passive sources as a result of health care tax legislation enacted in 2010.

- ***Estate Tax:*** Individuals can permanently shield $5.12 million (to be indexed for inflation beginning in 2013) from the estate tax, and the top estate tax rate is 40 percent.

- ***Alternative Minimum Tax (AMT):*** Due to flaws in the design of the AMT, its reach has steadily expanded over time to capture far more taxpayers than originally intended. As a result, Congress has enacted a series of so-called "patches" that prevent additional taxpayers from falling into the AMT. The act provides permanent AMT relief to maintain the number of AMT taxpayers at approximately 4 million as opposed to more than 30 million.

Tax Rate Comparison			
		2012	**2013**
Income Tax	**Ordinary Income**	Six tax brackets, ranging from 10% to 35%.	Seven tax brackets, ranging from 10% to 39.6%. Married taxpayers earning over $450,000 and single taxpayers earning over $400,000 are subject to the new 39.6% rate.*
Capital Income Tax	**Capital Gains**	Top rate is 15%. Taxpayers in 10% and 15% brackets pay no capital gains tax.	Top rate is 20% and applicable to married taxpayers earning over $450,000 and single taxpayers earning over $400,000. Taxpayers earning under these thresholds pay 15% rate unless they are in the 10% or 15% income tax brackets in which case capital gains are untaxed.*
	Dividends	Top rate is 15%. Taxpayers in 10% and 15% brackets pay no tax on dividends.	Top rate is 20% and applicable to married taxpayers earning over $450,000 and single taxpayers earning over $400,000. Taxpayers earning under these thresholds pay 15% rate unless they are in the 10% or 15% income tax brackets, in which case dividends are untaxed.*
Estate Tax	**Exemption**	$5.12 million	$5.12 million as indexed for inflation
	Top Rate	35%	40%
*** Beginning in 2013, health care legislation enacted in 2010 imposes: (1) an additional 0.9% tax on wage income for married couples/single filers earning more than $250,000/$200,000; and (2) an additional 3.8% tax on net investment income (i.e., passive income) for married couples/single filers earning more than $250,000/$200,000.**			

Tax Extenders

Congress typically renews certain tax incentives, also known as tax extenders, for one or two years at a time. As part of the act, the following tax extenders benefitting firms involved in multifamily housing are extended through 2013:

- ***Bonus Depreciation.*** Allows firms to expense, instead of depreciate over time, 50 percent of the cost of certain capital assets purchased in 2013.
- ***Energy Efficient New Homes Tax Credit.*** Provides low-rise multifamily properties (three stories or less) with a $2,000 per unit tax credit for new residences that achieve a 50 percent energy savings for heating and cooling over the 2004 International Energy Conservation Code and supplements.
- ***New Markets Tax Credit (NMTC).*** Helps facilitate construction of mixed-used developments in distressed areas.
- ***Low-Income Housing Tax Credit (LIHTC) Fixed Rate.*** In 2008, the typically floating rate on the 9 percent tax credit was fixed at 9 percent. That fixed rate was set to expire for properties placed into service on or after December 31, 2013, likely reducing investor interest in affordable housing development and rehabilitation through the LIHTC. It will now apply to any project that receives an LIHTC allocation prior to January 1, 2014.

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