Preliminary Summary of Tax Increase Provisions Affecting Real Estate in Ways and Means Draft Bill to Offset the Cost of the Infrastructure Reconciliation Bill September 13, 2021

Note: This listing includes proposals released by the House Ways and Means Committee staff as the starting point for a markup session that will begin this week. These items are subject to change before and during the Committee meeting and on the floor of the House. Even if and when these items are approved by the full House, they are subject to change, deletion, or addition when the bill is conferenced with the Senate, which will likely have its own version of tax increase proposals. In short, this is very tentative and could change.

I. What is not included that we are concerned about (the great):

- Changes to 1031 like-kind exchanges
- Repeal of step-up in basis
- Taxation of unrealized capital gains upon death of or gifting by the owner.

II. What is not as bad as we feared it might be (the really good):

- Increase of capital gains tax rate to 25% for those in the highest ordinary income tax bracket (married filing joint returns with taxable income over $450,000, heads of household with taxable income over $425,000, single filers with taxable income over $400,000). The President's proposal was to increase the rate to 39.6%.
    - **Applies to current tax year**. However, transition rule provides that existing top rate of 20% applies to gains from sales prior to date of introduction or gains from sales pursuant to written binding contract dated prior to date of introduction.
- Limits on 20% Deduction on Qualified Business Income (section 199A)
    - Maximum allowable deduction would be $500,000 for joint return, $400,000 for a single return, and $250,000 for a married filing separate return. The President's proposal was to limit the deduction at incomes of $400,000 and fully phased out by $500,000. The W&M proposal would affect only those with very high amounts of business income
        - Effective beginning in 2022.
- Carried interests – change tax treatment from capital gains to ordinary income
    - Extends the current law holding period required for capital gains treatment from 3 to 5 years. The 3-year holding period is retained for real property businesses and for taxpayers with AGI less than $400,000. The President's proposal would have entirely eliminated capital gains tax treatment for carried interests.
        - Effective beginning in 2022.

III. What is included that could concern a few NAR members/clients:

- Application of 3.8% net investment income tax to business income of higher-income individuals
    - Applies the 3.8% tax to cover net investment income from a business to taxpayers with more than $400,000 for single filers and $500,000 for joint filers.
        - Effective beginning in 2022.
- Increase in top marginal individual income tax rate
    - Increases the top rate from 37% to 39.6% beginning in 2022.
        - Effective beginning in 2022.
- Limit on excess business losses of individuals
    - The provision denies immediate deductions of very high business losses, but they can be carried forward to the next year.
        - Effective beginning in 2022.
- Surcharge on high income individuals, trusts, and estates
    - 3% surtax on modified AGI in excess of $5 million.
        - Effective beginning in 2022.
- Reduction in unified estate and gift tax credit
    - Reverts the estate and gift tax exemption level to its 2010 level of $5 million per individual, indexed to inflation (down from $10 million indexed today)
- Changes to estate and gift tax valuation rules for certain real property used in farming or other businesses, rules applicable to grantor trusts, and valuation of nonbusiness assets
    - Amends the rules that allow certain valuation reductions for certain real property used in a family farm or business
    - Limits current rules that allow certain valuation discounts
- Increase in minimum required distributions for high-income taxpayers with large retirement account balances
    - Applies to combined traditional IRA, Roth IRA and defined contribution retirement account balances exceeding $10 million and taxpayer's taxable income exceeds $450,000 (joint returns)

IV. Tax increases less likely to impact NAR members and clients:

- Corporate tax rate increase to 26.5%
- Interest expense deduction limit by certain domestic corporations that are members of an international financial reporting group
- Modifications to deduction for foreign-derived intangible income and global intangible low-taxed income
- Repeal of election for 1-month deferral in determination of taxable year of specified foreign corporations

- Modifications of foreign tax credit rules applicable to certain taxpayers receiving specific economic benefits
- Modifications to foreign tax credit limitations
- Foreign oil related income to include oil shale and tar sands
- Modifications to inclusion of global intangible low-taxed income
- Modifications to determination of deemed paid credit for taxes properly attributable to tested income
- Deduction for foreign source portion of dividends limited to controlled foreign corporation, etc.
- Limitation on foreign base company sales and services income
- Modifications to base erosion and anti-abuse tax
- Credit for clinical testing of orphan drugs limited to first use or indication
- Modification to treatment of certain losses
- Adjusted basis limitation for divisive reorganization
- Rents from prison facilities not treated as qualified income for purposes of REIT income tests
- Modifications to exemption for portfolio interest
- Payments equivalent to publicly traded partnership income payments
- Adjustments to earnings and profits of controlled foreign corporations
- Certain dividends from controlled foreign corporations to U.S. shareholders treated as extraordinary dividends
- Limitation on certain special rules for section 1202 gains
- Constructive sales – includes digital assets
- Rules relating to common control
- Wash sales – includes commodities, currencies, digital assets