NAR Issue Summaries

Federal Tax / Capital Gains

NAR Committee:

Federal Taxation Committee

What is the fundamental issue?

Under the American Taxpayer Relief Act (ATRA), enacted on January 2, 2013, long-term capital gains are taxed at a maximum rate of 15% for most individuals. However, for 2021 single individuals with taxable income of more than $445,850 a year and couples with more than $501,600 are subject to a 20% capital gains tax rate. (Long-term gains are gains on investment assets that are held for more than one year.) The depreciation recapture rate is presently 25% and did not change with ATRA. Over the past 30 years the capital gains tax rate has been as high as 49%. The current 15% rate (for most people), enacted in 2003, is the lowest that it has ever been.
The Tax Cuts and Jobs Act did not change these capital gains tax rates or the depreciation recapture rate. However, it did change the taxable income levels at which the capital gains rate changes from 15% to 20%. These thresholds are reflected in the figures above.

I am a real estate professional. What does this mean for my business?

Favorable capital gains tax rates provide a stimulus for owners who wish to sell appreciated property. These rates also provide something of a reward for those who take the risk of making capital investments. Lower rates relieve the so-called "lock-in" effect, in which taxpayers are unwilling to sell property because of high tax costs associated with sales. Lower capital gains rates also mitigate in part the built-in gain that arises from inflation. Low capital gains rates are especially important for those investors who are able to realize gains (and not losses) during times of economic slowdown.

NAR Policy:

NAR supports a meaningful differential between the tax rates for ordinary income and the tax rates for capital gains. NAR opposes depreciation recapture rates that are higher than the capital gains rates. This inequality puts real estate investment at a disadvantage when compared to non-depreciable assets such as stocks. (NAR has not specified the parameters of a "meaningful differential.")

Opposition Arguments:

Opponents of a lower tax rate for capital gains believe that such treatment is unfair to those who pay ordinary tax rates on earned income, such as wages and salaries. Moreover, many proponents of a simpler tax system believe that great strides in the direction of simplicity are possible by removing the favorable tax treatment of capital gains and taxing all income at the same rates.

Legislative/Regulatory Status/Outlook

Tax reform was a hot legislative topic in Washington for more than a decade before the passage of the Tax Cuts and Jobs Act of 2017. Some proponents of a simpler tax system advocated the idea of eliminating the differential between capital gains and ordinary income. Others, however, believed strongly that a lower tax rate for capital gains provides an important incentive for investors and ultimately leads to more economic growth and job creation.

As indicated above, the changes made in the new law did not affect the capital gains tax rates, only the levels of income where the 15% rate changes to the top rate of 20%.

Even though tax reform is difficult to enact, and tax bills with big changes to tax rates are relatively rare, it would likely be a mistake to assume that tax reform is now settled for some years. The Tax Cuts and Jobs Act received zero support from Democrats, and many members of this party would like to revisit some of the changes made by the new law. Indeed, the Biden White House has proposed taxing capital gains at the same rate as ordinary income for those making over $1 million per year.

Current Legislation/Regulation (bill number or regulation)

No actions at this time.

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