



Tax Reform Webinar

January 4, 2018

Speakers:

Jerry Frumm

Vice Chairman & Chief Investment Officer, Senior Lifestyle

Jeanne McGlynn Delgado,

Vice President Government Affairs, ASHA

Randy Hardock

Partner, Davis & Harman LLP

Jerry Frumm is the Vice Chairman and Chief Investment Officer of Senior Lifestyle. In this role Jerry serves as the Chairman of the Senior Lifestyle Investment Committee which reviews all investment activities for the company. Jerry has been associated with Senior Lifestyle since its inception in 1985. During his tenure, Jerry has been involved in all phases of the development and acquisition of Senior Lifestyle communities and has closed on innumerable debt and equity transactions. Jerry is responsible for key relationships with Senior Lifestyle's diversified base of capital partners.

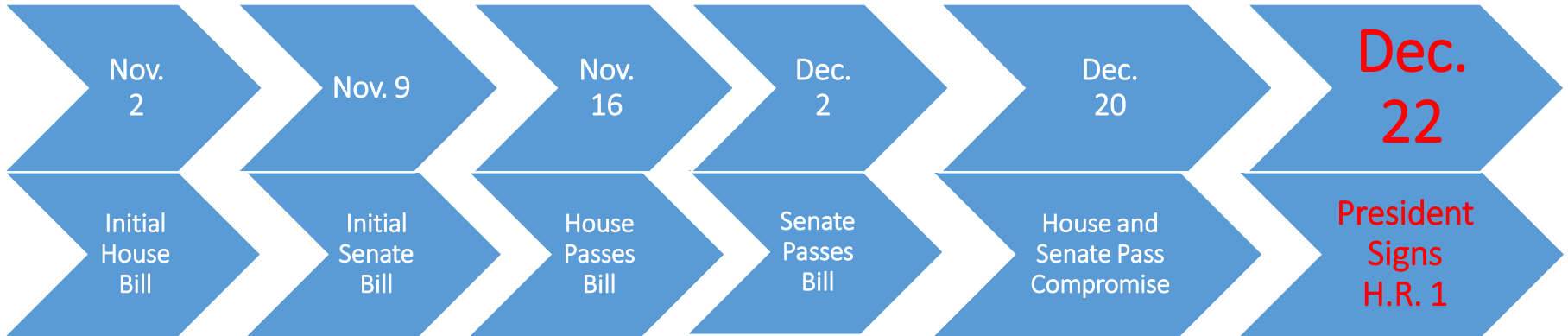
Jerry is an attorney who has practiced with both the state and federal governments. He is a member of the Chicago Bar Association and he also currently serves as the Chairman of the Public Policy Committee on The American Seniors Housing Association.

Jeanne McGlynn Delgado is ASHA V.P. Government Affairs. Jeanne leads ASHA's public policy efforts to advance federal issues of importance to the seniors housing industry on Capitol Hill and before federal agencies. She also manages the Senior Housing PAC disbursement and fundraising activities.

Randy Hardock is a Partner at Davis & Harman LLP. Randy has served as ASHA's Legislative Counsel since 1998. Earlier career highlights include service as Tax Counsel for the Senate Finance Committee and the U.S. Department of the Treasury.

Introductions and Background

- **Tax Reform at Light Speed**



- **Most Provisions Effective 1/1/18**

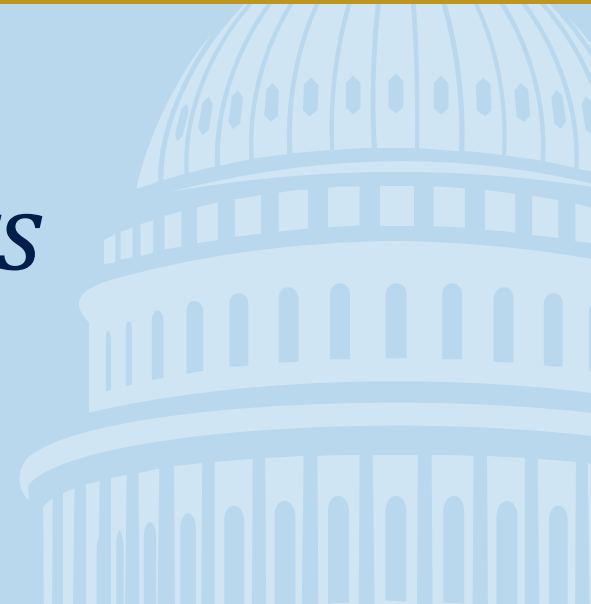
- **Major Tax Cuts (Some Tax Increases)**

- **Overall Tax Cuts – \$1.65 Trillion over 10 Years**
- **Spending Cuts – \$ 0.2 Trillion over 10 Years**
- **Increase in Static Deficit – \$1.45 Trillion over 10 Years**

Income Tax Rate Basics

- **Corporations:**
 - **21% Flat Tax Rate for Tax Years After 2017**
 - **AMT Repealed**
- **Individuals:**
 - **Across-the-Board Rate Reduction** – 37% top tax rate on joint return for taxable income over \$600,000 (\$500,000 individual)
 - **AMT Thresholds Increased**
 - **Cap. Gains/Dividends Tax Rates Unchanged**
- **Estate Tax:**
 - **Exemption Doubled**
- **Most Individual Changes Sunset After 2025**

Key Changes for Seniors Housing Residents



Key Changes for Seniors Housing Residents

	Prior Law	New Law
MEDICAL EXPENSE DEDUCTION	<p>Individuals are allowed a deduction for unreimbursed medical care expenses to the extent that the expenses exceed 10% of AGI. For 2013-2016, except for purposes of the AMT, taxpayers were allowed to deduct unreimbursed medical care expenses to the extent the expenses exceeded 7.5% of AGI if the taxpayer or the taxpayer's spouse had attained at least age 65 by the end of the taxable year.</p> <p>Medical care includes expenses for long-term care services and premiums paid for a qualified long-term care insurance contract. (IRC § 213)</p>	<p>For 2017 and 2018, the medical expense deduction is available to the extent that expenses exceed 7.5% of AGI for all taxpayers, including for purposes of the AMT. After 2018, the 7.5% AGI limit sunsets and the medical expense deduction is available to the extent that medical expenses exceed 10% of AGI for all taxpayers. (H.R. 1 § 11027)</p> <p>This provision is effective for taxable years beginning after December 31, 2016.</p>

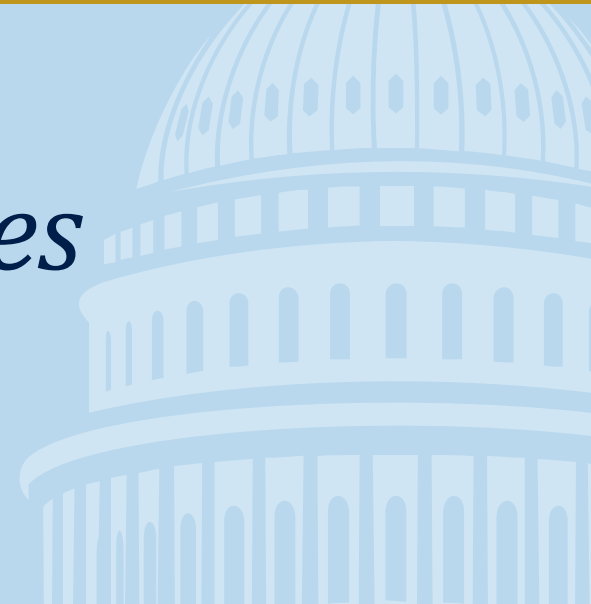
Key Changes for Seniors Housing Residents

	Prior Law	New Law
<p>STATE AND LOCAL TAX DEDUCTION</p>	<p>Individuals may claim itemized deductions for specific state and local taxes (SALT), including taxes on real and personal property and income or general sales taxes. (IRC § 164)</p>	<p>The deduction for state and local taxes is limited to \$10,000 for joint and individual returns (\$5,000 if married filing separately). The deduction is limited to (1) state and local property taxes (real or personal), and (2) state and local income taxes (or sales taxes in lieu of income taxes).</p> <p>THE LIMIT DOES NOT APPLY TO REAL OR PERSONAL PROPERTY TAXES PAID OR ACCRUED IN CARRYING ON A TRADE OR BUSINESS.</p> <p>Any amount paid in 2017 or earlier with respect to state or local income taxes imposed for a year after 2017 is treated as paid on the last day of the taxable year to which the tax applies. (H.R. 1 § 11042)</p> <p>This provision generally applies to taxes paid or accrued after 2017 and before 2026.</p>

Key Changes for Seniors Housing Residents

	Prior Law	New Law
STANDARD DEDUCTION	An individual who does not itemize deductions may take a standard deduction. For 2018, the standard deduction would have been \$6,500 for single taxpayers, \$9,550 for a head of household, and \$13,000 for joint filers. (IRC § 63)	<p>The standard deduction is increased for 2018 to \$12,000 for individuals, \$18,000 for a head of household, and \$24,000 for married couples filing jointly. The deduction is indexed for inflation in future years. (H.R. 1 § 11021)</p> <p>This provision is effective after 2017 and sunsets after 2025.</p>
MORTGAGE INTEREST DEDUCTION: ACQUISITION INDEBTEDNESS	Individuals may deduct interest paid on up to \$1 million of qualified home acquisition indebtedness with respect to their principal residence and one other residence. (IRC § 163(h))	<p>For homes purchased after 12/15/17, the deduction is generally limited to interest paid on up to \$750,000 of qualified home acquisition indebtedness. Indebtedness incurred on or before 12/15/17 (and refinancing of that debt) is still eligible for the \$1 million limit. (H.R. 1 § 11043)</p> <p>This provision is effective after December 31, 2017 and sunsets after 2025. In years after 2025, the limitation reverts to \$1 million.</p>

*Key Changes for
Seniors Housing Businesses*



Key Changes for Seniors Housing Businesses

	Prior Law	New Law
LIMITATION ON BUSINESS INTEREST DEDUCTION (BID) GENERALLY	Business interest is generally deductible in the taxable year in which the interest is paid or accrued, subject to certain limitations. (Code § 163(j))	<p>For most businesses (regardless of whether organized as a C corporation or pass-through), there is no deduction for net business interest expense in excess of 30% of the business’s “adjusted taxable income.” Adjusted taxable income is computed as follows:</p> <ul style="list-style-type: none"> • For taxable years beginning after 2017 and before 2022, adjusted taxable income is computed by adding back in (1) NOLs, (2) the new 20% deduction for certain pass-through businesses, and (3) depreciation, amortization, or depletion. • Thereafter, adjusted taxable income will be computed without adding back in depreciation, amortization, and depletion. <p>Any interest not allowed as a deduction may be carried forward indefinitely. (H.R. 1 § 13301)</p> <p>These provisions are effective for taxable years beginning after December 31, 2017 and apply to existing debt.</p>

Key Changes for Seniors Housing Businesses

	Current Law	New Law
<p>EXCEPTION TO BID LIMITATION FOR ELECTING “REAL PROPERTY TRADES OR BUSINESSES”</p>	<p>The current deduction of passive losses is limited under Code § 469. Under those passive loss rules, all “rental activity” is deemed passive even if the taxpayer materially participates, unless the “real estate operator” exception applies. Under that exception the taxpayer must provide significant personal services in connection with a “Real Property Trade or Business, which is defined as:</p> <p style="text-align: center;">“any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.”</p> <p>(IRC § 469(c)(7)(C))</p>	<p>A “Real Property Trade or Business” (defined by cross-reference to the definition in the current passive loss rules) may make an irrevocable election not to have the BID limitation apply. (H.R. 1 § 13301)</p> <p>A real property trade or business making such an election would be subject to a revised Alternative Depreciation System (ADS). (H.R. 1 § 13204)</p> <p>The legislative history (Conference Report) states that the cross-reference to the definition of “real property trade or business” in the passive loss rules does not mean that any of the other elements of the passive loss rules are made applicable by the cross reference, and further states that the operation or management of a lodging facility is a real property trade or business.</p>

Key Changes for Seniors Housing Businesses

	Current Law	New Law
<p>“REAL PROPERTY TRADE OR BUSINESS” DEFINITION AND SENIORS HOUSING</p>	<p>The passive loss rules provide no specific guidance on the treatment of seniors housing under the Real Property Trade or Business definition. Treasury Regulations provide that for determining real property trades or businesses, the determination:</p> <p style="padding-left: 40px;">“is based on all of the relevant facts and circumstances. A taxpayer may use any reasonable method of applying the facts and circumstances in determining the real property trades or businesses in which the taxpayer provides personal services. . . . Once a taxpayer determines the real property trades or businesses in which personal services are provided the taxpayer may not redetermine those real property trades or businesses in subsequent taxable years unless the original determination was clearly inappropriate or there has been a material change in the facts and circumstances”</p>	<p>The Legislative History (Senate Floor Colloquy) further confirms that:</p> <p style="padding-left: 40px;">“the operation or management of residential rental property housing the elderly, such as an assisted living residential facility, memory care residence, or a continuing care retirement community, are not excluded from the definition of a ‘real property trade or business’ merely because they provide necessary supplemental assistive services that meet the needs of aging seniors.”</p>

What is a Colloquy?

December 19, 2017

CONGRESSIONAL RECORD — SENATE

S8109

Mr. LANKFORD. Mr. President, we commend Senator HATCH for his efforts on this most important bill. We would like to ask for confirmation on a question that will be of considerable importance to millions of seniors housing residents, including those living in assisted living and memory care residences and in continuing care retirement communities, CCRCs.

As you know, capital for seniors housing, including assisted living and memory care residences and CCRCs, essentially comes from the same lending sources that fund other types of real estate. HUD, Fannie Mae, Freddie Mac, and commercial banks finance seniors housing through their respective housing related programs. Seniors housing competes with other real estate based investments for both equity and debt and it is critical that our tax law treat these seniors housing units in a manner that is comparable to other housing.

Provisions relating to the deduction for business interest and to the deduction for depreciation in the bill include rules governing a "real property trade or business," as that term is currently defined in the tax law. Under these rules, the conferees stated that they intended that a real property operation or a real property management trade or business includes the operation or management of a lodging facility. We would like to ask the distinguished chairman of the Committee on Finance if he agrees with us that the operation or management of residential rental property housing the elderly, such as an assisted living residential facility, memory care residence, or a continuing care retirement community, are not excluded from the definition of a "real property trade or business" merely because they provide necessary supplemental assistive services that meet the needs of aging seniors.

Mr. HATCH. Mr. President, I agree.

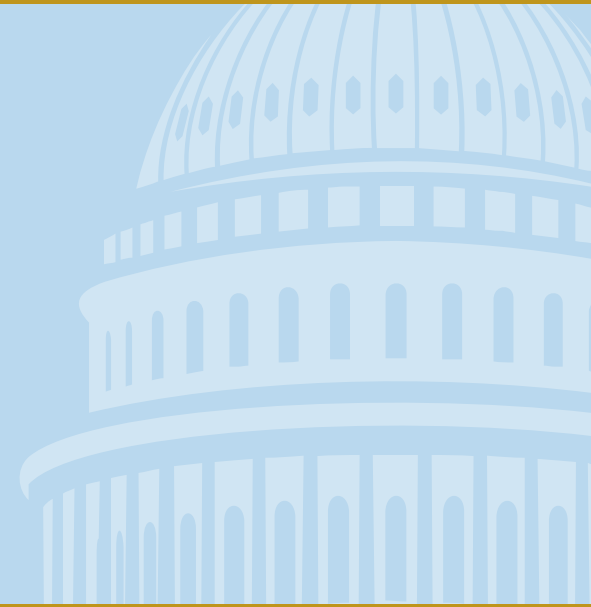
Key Changes for Seniors Housing Businesses

	Prior Law	New Law
DEPRECIATION OF REAL ESTATE	<p>Depreciation Recovery Periods:</p> <ul style="list-style-type: none"> • 39 years for nonresidential real property • 27.5 years for residential rental property • 15 years for qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property. <p>(IRC § 168)</p>	<p>A taxpayer that elects the irrevocable real property trade or business exception to the BID limitation for a trade or business is required to use a new Alternative Depreciation System (ADS). Under ADS, the depreciation recovery periods would be as follows:</p> <ul style="list-style-type: none"> • 40 years for nonresidential real property • 30 years for residential rental property • 20 years for newly defined “qualified improvement property” which generally includes qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property with some changes. <p>An electing real property trade or business may still be eligible for bonus depreciation (expensing) on eligible shorter-lived property.</p> <p>The ADS changes apply to taxable years beginning after December 31, 2017 (including existing properties).</p> <p>(H.R. 1 § 13204)</p>

Key Changes for Seniors Housing Businesses

	New Law
20% DEDUCTION FOR BUSINESS INCOME OF PASS-THROUGH ENTITIES	<p>Beginning in 2018, an individual taxpayer generally may, solely for income tax purposes, deduct the “combined qualified business income amount” from partnerships, S corporations, or sole proprietorships in an amount up to 20% of the taxpayer’s taxable income (after the deduction of any net capital gain).</p> <p>Subject to numerous limitations, the combined qualified business income amount is the sum of the deductible amounts for each trade or business of the taxpayer. The deductible amount for a trade or business is the lesser of: (1) 20% of the taxpayer’s qualified business income with respect to such trade or business or (2) the greater of (a) 50% of the W-2 wages paid with respect to the qualified trade or business, or (b) the sum of 25% of the W-2 wages with respect to the qualified trade or business plus 2.5% of the unadjusted basis, immediately after acquisition, of all “qualified property” (generally tangible depreciable property, not land).” In addition, 20% of qualified REIT dividends are also included in combined qualified business income.</p> <p>A “qualified trade or business” is any trade or business other than the trade or business of being an employee or a “specified service trade or business”</p> <p>This provision sunsets after 2025. (H.R. 1 § 11011)</p>

Other Important Real Estate Changes



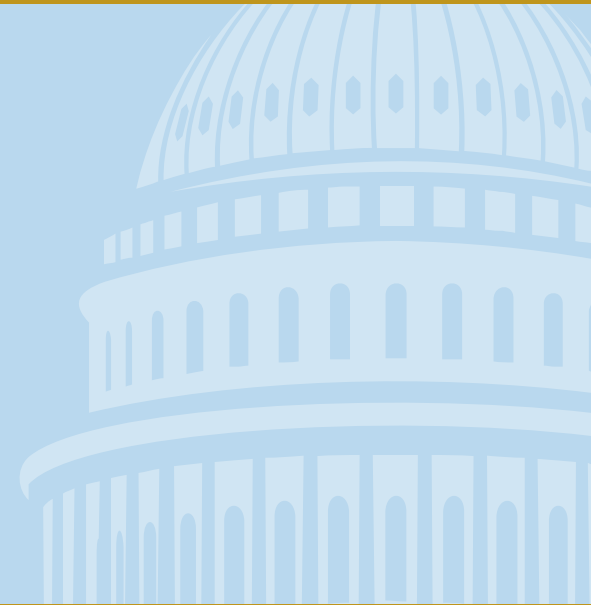
Other Important Real Estate Changes

	New Law
LIKE-KIND EXCHANGES	Effective for transfers after 2017, deferral of gain on like-kind exchanges is only allowed for like-kind exchanges with respect to real property. Real property held primarily for sale would not be eligible. (H.R. 1 § 13303)
LIMITS ON DEDUCTION OF LOSSES BY ACTIVE PARTICIPANTS IN TRADES OR BUSINESSES	<p>In general, taxpayers (other than a C corporation) may not deduct “excess business losses” incurred in an active trade or business from their unrelated wage or portfolio income. Excess business losses are the total losses attributable to the taxpayer’s businesses over total gain from those businesses, <u>plus</u> \$500,000 (for joint filers) or \$250,000 (for other individuals). Excess business losses may be carried forward and treated as net operating loss (NOL) carryforward in subsequent taxable years. (H.R. 1 § 11012)</p> <p>This provision applies to existing investments and is effective for taxable years beginning after 2017. The changes sunset after 2025.</p>
NET OPERATING LOSSES (NOLS)	<p>Corporate NOL deductions are limited to 80% of taxable income, determined without regard to the NOLs. Carryovers will be adjusted, and may be carried forward indefinitely. Existing carryback rules generally are repealed. (H.R. 1 § 13302)</p> <p>The loss limitation change generally is effective for losses arising in taxable years beginning after 2017. The carryback and carryforward changes are effective for NOLs arising in taxable years ending after 2017.</p>

Other Important Real Estate Changes

	New Law
PARTNERSHIP INTERESTS / CARRIED INTERESTS	<p>A three-year holding period requirement is imposed to qualify for the long-term capital gains rate with respect to certain “applicable partnership interests” received in connection with the performance of services. Applicable partnership interests are limited to partnership interests in a trade or business which consist, in whole or in part, of raising or returning capital, or developing securities, commodities, real estate held for rental or investment, options, or derivative contracts. (H.R. 1 § 13309)</p> <p>This provision is effective for taxable years beginning after 2017.</p>
REHABILITATION CREDIT FOR OLD OR HISTORIC BUILDINGS	<p>For taxable years after 2017, the 10% tax credit provided for qualified rehabilitation expenditures with respect to old buildings (i.e., generally pre-1936 buildings) is repealed.</p> <p>For amounts paid or incurred after December 31, 2017, the 20% credit for qualified rehabilitation expenditures with respect to a certified historic structure. is claimed ratably over a five-year period beginning in the taxable year in which the structure is placed in service. (H.R. 1 § 13402)</p>

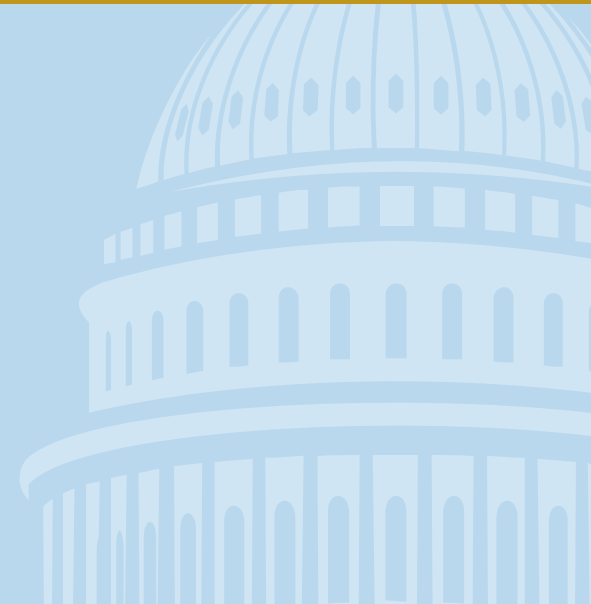
*Key Changes for Seniors
Housing Employees and
Employers*



Key Changes for Seniors Housing Employees and Employers

	New Law
HEALTH INSURANCE MANDATE	The individual mandate penalty is set to zero beginning in 2019. (H.R. 1 § 11081)
DEDUCTION FOR QUALIFIED TRANSPORTATION FRINGE BENEFITS	<p>The employer deduction for qualified transportation fringe benefits is generally disallowed. The employee exclusion for those benefits is retained.</p> <p>In addition, except as necessary for ensuring the safety of an employee, any employer deduction for providing transportation or any payment or reimbursement for commuting to work is disallowed. (H.R. 1 § 13304)</p> <p>These provisions are effective for amounts paid or incurred after 2017.</p>

*Next Steps: Seniors
Housing and Tax Reform
Implementation*



**AMERICAN
SENIORS
HOUSING
ASSOCIATION**

Living Longer Better
