Americans for Financial Reform Education Fund

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Real Estate Tycoons Benefit from Billions in Tax Breaks:

Resources Should Instead Cover Families' Rent During Coronavirus Crisis

The federal tax code includes many tax breaks and loopholes that provide tremendous cash benefits to real estate investors, developers, and corporate landlords. Closing these loopholes would generate billions of dollars in revenue. Together, closing the described Wall Street real estate loopholes could generate close to $350 billion over 10 years. Along similar lines, Vice President Joe Biden's campaign has estimated that closing a set of such loopholes would raise $294 billion over 10 years.[1]

The generous tax breaks for real estate tycoons is in stark contrast to the purported lack of resources to support families struggling because of the Coronavirus who are living in fear of eviction.

Tax breaks that significantly benefit the Wall Street real estate industry and should be closed:

Eliminate new tax breaks for wealthy investors included in the CARES Act ($135 billion over 10 years): The CARES Act rolled back two of the rare revenue raising provisions of the 2017 Tax Cuts and Jobs Act (TCJA) in a way that disproportionately benefits real estate investors. The CARES Act expanded the losses wealthy tax filers can use to offset the taxes they owe — including using losses from before the Coronavirus crisis in 2018 and 2019 along with 2020 losses (and allows the deduction of those losses at the higher tax rates from before the Trump tax cut/ TCJA). The CARES Act provisions applied to certain businesses and wealthy business owners (pass-through businesses like sole proprietorships, partnerships, and S corporations, whose income-tax obligations are paid by the business owners, not the business itself). Real estate investors particularly gain from this loophole because they often report losses although their properties actually gain in value (see below). The Joint Committee on Taxation estimates that the tax break for wealthy pass-through owners will cost $135 billion over the next ten years with over 80 percent of the benefits going to millionaires.[2]

Eliminate the special exemption from passive loss rules for rental losses for the real estate industry (included in Biden proposal; $84 billion over 10 years[3]): The 1986 tax reform prohibited businesses from investing in business which generated losses in order to reduce their income for tax purposes, but in 1993, the real estate industry successfully lobbied for a special rental income exemption from these passive loss rules, creating a tax benefit for these money-losing real estate investments.

Eliminate the accelerated depreciation of real estate (Biden proposal covers rental properties; rental and other real estate at $21 billion over 5 years[4]): Businesses can depreciate assets that lose value over time as they age, reflecting the declining value of things like machinery or vehicles. But real estate investors can depreciate their assets and reduce their taxes even though real estate values do not depreciate the way equipment or vehicles lose value and real estate values often rise over time (unlike used cars), especially in more expensive or rising markets. Some of the annual tax breaks from depreciated property are recaptured if the property is eventually sold at a profit, but at a reduced tax rate that still makes this a lucrative loophole.[5]

Eliminate deferral of capital gains from like-kind exchanges (included in Biden proposal; at least $22 billion over 10 years[6]): The TJCA maintained a special loophole for real estate investors to avoid paying capital gains taxes on profits from the sale of properties as long as these profits were re-invested in "comparable" assets (profits from the sale of one building could be used to buy another building without paying any taxes).

End pass-through income deduction for Real Estate Investment Trust (REIT) dividends ($29 billion over 10 years[7]): The 2017 TCJA allowed recipients of REIT dividends to take a special deduction that provides them with a preferential rate on their investments.

Eliminate unlimited interest deductions for real estate investors ($16 billion over 10 years[8]): The TJCA allowed real estate investors to deduct *all* of their interest payments on buildings from their income while other large businesses can only deduct 30% of their interest payments.

Repeal Opportunity Zone tax break ($17 billion over 5 years, upwards of $27 billion over 10 years[9]): The TCJA provided a special tax break for investments in designated "Opportunity Zones." The tax cut was purportedly aimed at fostering economic rejuvenation of lower income areas but was so poorly designed and implemented that it provides tax breaks for developments that were already underway or in rapidly gentrifying areas. The Opportunity Zone investments essentially provide an estimated $26 billion in tax breaks for real estate investors to accelerate gentrification and the dislocation of families of color and lower-income families.

Endnotes:

[1] Mermin, Gordon B. et al. Tax Policy Center. Urban Institute and Brookings Institution. "An Analysis of Former Vice President Biden's Tax Proposals." March 5, 2020 at 6.
[2] Joint Committee on Taxation (JCT). "Estimated Revenue Effects of the Revenue Provisions Contained in an Amendment in the Nature of a Substitute to H.R. 748." April 23, 2020 at 2; Barthold, Thomas A. JCT Chief of Staff. Letter to Sen. Sheldon Whitehouse and Rep. Lloyd Doggett. April 9, 2020.
[3] U.S. Treasury. Tax Expenditures FY2021. February 26, 2020 at 23.
[4] JCT. "Estimates of Federal Tax Expenditures for Fiscal Years 2019-2023." JCX-55-19. December 18, 2019 at 24.
[5] Americans for Tax Fairness (ATF). "Fair Taxes Now: Revenue Options for a Fair Tax System." April 2019 at 37.
[6] ATF (2019) at 18.
[7] ATF (2019) at 38.
[8] ATF (2019) at 37.
[9] JCT (2019) at 26; ACCE Institute, Americans for Financial Reform Education Fund, Kansas City Tenants, New York Communities for Change. "Wall Street's Big Opportunity." June 2020 at 13.