

Statement for the record from the
National Association of Home Builders

For the
Committee on Ways and Means

on

“Hearing on Fair and Equitable Tax Policy for America’s Working Families”

Thursday, September 6, 2007

The 235,000 members of the National Association of Home Builders (NAHB) appreciate the opportunity to submit this statement for the record for the House Ways and Means Committee hearing entitled “*Fair and Equitable Tax Policy for America’s Working Families.*” This statement specifically deals with the Alternative Minimum Tax (AMT). As we previously communicated to the Committee, NAHB is in full support of the statement presented by Adam Ishfin on behalf of the International Council of Shopping Centers (ICSC), the Real Estate Roundtable and other real estate organizations regarding the issue of carried interest.

Background

The AMT is an issue of great importance to the home building industry, most of whose businesses are organized as pass-through entities such as partnerships and limited liability companies. The AMT is a source of complexity and financial burden for such pass-through entities because of the interaction between the tax of business activities and the rules regarding individual taxation. For these reasons, which are expanded upon in more detail below, NAHB urges Congress to repeal the corporate and individual AMT altogether.

As you know, the AMT is a parallel income tax created in 1970 to prevent a very small number of taxpayers from paying no federal income tax due to significant use of losses, credits, deductions and other tax preferences. However as is well known, because the qualifying income-based criteria were not indexed inflation, the AMT increasingly threatens a large number of middle-class income taxpayers. The Joint Committee on Taxation reports that unless the AMT is reformed or repealed, more than 23 million individual and corporate taxpayers will face a higher tax bill for calendar year 2007 due to the AMT.¹ More importantly, the AMT increases the tax administrative burden for an even larger number of taxpayers, particularly small business taxpayers, because of the need to account for the possibility of becoming an AMT payer in any given tax year.

Impacts of the AMT on Housing

The AMT also interferes with the policy objectives of important tax provisions, such as the Internal Revenue Code (IRC) Section 42 Low Income Housing Tax Credit (LIHTC), which may not be claimed for the purposes of the AMT. In the past few years, as the reach of the AMT has expanded, the LIHTC became unattractive to individual investors. Consequently, individual taxpayer participation in the nation’s most important affordable housing program has fallen by one-third from the period 1994 to 2001. Individual investors now make up less than 15% of LIHTC program participants. This is unfortunate because individual investors, unlike corporate investors, are more likely to propose LIHTC projects involving rural, senior and special needs residents.

The AMT also interferes with use of Section 45L New Energy Efficient Home Tax Credit, which benefits home builders and home buyers for the construction of energy

¹ “Present Law and Background Relating to the Individual Alternative Minimum Tax.” Joint Committee on Taxation. June 27, 2007.

efficient homes. Because the credit cannot be claimed by an AMT taxpayer, many home builders who file as individual taxpayers find their AMT-paying status also prevents them from claiming the Section 45L credit. The uncertainty associated with the AMT thus inhibits the effectiveness of this important green building program.

More broadly, the AMT represents a tax on homeownership. Taxes paid on owner-occupied housing are not deductible under the AMT, so homeowners experience a higher tax bill at the end of the year due to the AMT. This effect is particularly painful for homeowners residing in communities with high housing prices and property taxes, such as neighborhoods near large metropolitan areas. Given the general tax policy principle that an income tax should only tax income (as defined by, for example, the Haig-Simmons definition), taxing money that is paid as state and local taxes is unfair and economically inefficient.

Potential Solutions

NAHB applauds the discussion around proposals to reform the AMT. For example, there have been press reports of a proposal to exempt from the AMT taxpayers with adjusted gross income (AGI) of less than \$250,000, partially reduce the AMT for taxpayers with AGI of more than \$250,000 and less than \$500,000, and increase the AMT rate for taxpayers with AGI of more than \$500,000. Setting aside discussion of the relative pros and cons of such a proposal at this time, NAHB remains concerned that despite this effort to protect the middle class, the AMT would remain a tax on this class of homeowners.

Under present law, Section 121 of the IRC provides an exclusion from tax on capital gain allocable to the sale of a principal residence. The gain exclusion is equal to \$250,000 for taxpayers filing single returns and \$500,000 for taxpayers filing jointly. Similar to the initial flaws associated with the AMT, these exclusion amounts are not indexed for inflation. Consequently, in the near future, increasing numbers of taxpayers will be required to report large amounts of taxable gain due to the sale of a home. This in turn will result in a one-time increase in the homeowner's AGI and therefore, under the proposed AMT reform, will increase the homeowner's likelihood of having to pay AMT. Consequently, as part of any AMT reform plan, NAHB strongly recommends that the Section 121 exemption amounts also be indexed to inflation, so that the a reformed AMT does not become a tax on homeownership. Congress should fix this problem now before it becomes a larger issue for taxpayers and homeowners.

Conclusion

NAHB looks forward to working with the Congress to find a solution to address the increasing burden of the AMT. The nation's home builders feel the squeeze of the AMT in similar ways to individual taxpayers. In particular, home builders are concerned about the effects of the AMT on homeowners and its growing effect to reduce the effectiveness of other important provisions of the nation's tax code, from green building to affordable housing. Congress should act to fix the AMT to ensure the continued policy success of these important housing tax incentives.