Federal Tax Code – 2017 Tax Cuts and Jobs Act

Provision	Current Law (Section)	Tax Cuts and Jobs Act	LOCUS Staff Analysis
Capital Gains Exclusion	(26 U.S.C. §121) Under current law, a taxpayer may exclude from gross income up to $500,000 (for joint filers) or $250,000 (for other filers) of gain on the sale of a principal residence. The property must have been owned and used as the taxpayer's principal residence for two out of the previous five years. A taxpayer may only use this exclusion once every two years.	The Tax Cuts and Jobs Act maintains the current U.S. Code pertaining to the capital gains exclusion.	**Recommendation:** Maintaining the capital gains exclusion at the current level does not spur homeownership or expand housing choices. The capital gains exclusion limit should be lowered to $125,000 for single filers and $250,000 for households. This would result in significant revenues for the government.

Mortgage Interest Deduction	(26 U.S. Code § 163) Under current law, a taxpayer may claim an itemized deduction for mortgage interest paid with respect to a principal residence and one other residence of the taxpayer. Itemizers may deduct interest payments on up to $1 million in acquisition indebtedness (for acquiring, constructing, or substantially improving a residence), and up to $100,000 in home equity indebtedness. Under the alternative minimum tax (AMT), however, the deduction for home equity indebtedness is disallowed.	The Tax Cuts and Jobs Act allows taxpayers to continue to claim an itemized deduction for interest on acquisition indebtedness paid with respect to a principal residence and one other residence. The current $1 million limitation is reduced to $750,000. In the case of acquisition indebtedness incurred before December 15, 2017 this limitation remains at $1,000,000. The provision further eliminates the deduction for home equity indebtedness.	**Comment:** Traditionally, homeowners with high incomes receive a greater percentage of the benefits from mortgage interest deductions than those purchasing lower cost homes. The greater the deduction, the greater the benefits accrued by these high-earning households. Therefore, homeowners taking out smaller-scale mortgages for entry-level homes do not benefit from greater deduction quotas. The final bill allows homeowners to deduct interest payments made on their first $750,000 worth of home loans, as opposed to the first $1 million upheld by the old tax code. This threshold is more reasonable in encouraging access to broad homeownership. **Recommendation:** LOCUS discourages incentives that steer homeowners towards a particular housing product. The coalition does not favor policies that challenge access to entry level homes. Therefore, LOCUS supports the reduction of the mortgage interest deduction from $1 million to $750,000 and encourages the limitation to be further reduced to $500,000.

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10% penalty for first home purchases exception	(26 U.S. Code § 401) Under current law, an additional 10% tax is imposed on distributions from retirement plans and Individual Retirement Accounts (IRAs) occurring before the account holder reaches age 59½. This 10% tax is in addition to any income tax that may be due on the distribution. There are several exceptions to the early withdrawal penalty, including early distributions of up to $10,000 to pay for first-time homebuyer expenses.	No mention of the 10% penalty in the Tax Cuts and Jobs Act.	**Comment:** The 10-percent penalty for first home purchases exception allows first time home buyers up to $10,000 penalty-free from their IRA to help buy, build or rebuild a first home. The money may be used to pay financing and closing costs. This policy encourages homeownership. **Recommendation:** LOCUS supports policies that encourage and increase access to homeownership.
Deductions for soil and water conservation	(26 U.S. Code Section 175) Under current law, a taxpayer engaged in the business of farming may deduct immediately, rather than recover over time through annual depreciation deductions, costs paid or incurred during the tax year for the purpose of soil or water conservation in respect of land used in farming, for the prevention of erosion of land used in farming, or for endangered species recovery. Such expenditures are allowed as a deduction, not to exceed 25 percent of the gross income	No mention of deductions for soil and water conservation in the Tax Cuts and Jobs Act.	**Comment:** One of the principles of smart growth development is to preserve farmland in critical environmental areas. **Recommendation:** LOCUS encourages the inclusion of measures that support environmental stewardship.

	derived from farming during the tax year, with any excess amount carried over to a succeeding year subject to the same percentage limitations.		
Deductions for energy-efficient commercial buildings	(26 U.S. Code Section 179D) Under current law, a taxpayer could claim a deduction with respect to certain energy-efficient commercial building property expenditures incurred prior to 2014. The deduction was limited to an amount equal to $1.80 per square foot of the property for which such expenditures were made. The deduction was allowed in the year in which the property was placed in service. The deduction expired at the end of 2013.	No mention of deductions for energy efficient commercial buildings in the Tax Cuts and Jobs Act. Note: This tax deduction expired at the end of 2016. Any qualified equipment installed prior to January 1, 2017 is eligible for this deduction. Equipment installed on or after January 1, 2017 is not eligible for this deduction. The Tax Cuts and Jobs Act allows the deduction to remain expired.	**Comment:** The Energy-Efficient Commercial Buildings Tax Deduction was a significant financial incentive for designers to meet or exceed an agency's energy reduction requirements for new and existing buildings. **Recommendation:** LOCUS does not support measures that discourage the construction of energy efficient buildings. The deduction should be reinstated and/or combined with another credit to provide incentives for energy efficiency improvements in commercial buildings.
Deduction for taxes not paid or accrued in a trade or business	Under current law, an individual may claim an itemized deduction for State and local government income and property taxes paid. In lieu of the itemized deduction for State and local income taxes, individuals may claim, for tax years beginning before 2014, an itemized deduction for State and local government sales taxes.	The Tax Cuts and Jobs Act repeals the itemized deduction for State and local income or sales taxes, but continues to allow deductions for State and local income or sales taxes paid or accrued in carrying on a trade or business or producing income. Allows individuals to claim itemized deductions on State and local property taxes up to $10,000.	**Comment:** The provision eliminates a tax benefit that subsidizes high-tax states and cities and increases spending at state and local levels. It *limits* the real estate property tax deduction that is historically utilized by high-income households. **Recommendation:** LOCUS supports the repeal of these deductions that are primarily taken by high-income households and earners. LOCUS

		Effective for tax years beginning after December 31st, 2017.	encourages access to diverse levels of homeownership.
Low-income housing tax credit (LIHTC)	(26 U.S. Code § 42) Owners of certain residential rental property may claim a low-income housing tax credit (LIHTC) over a ten-year period for the cost of rental housing occupied by qualifying low-income tenants. However, rental housing must remain qualified low-income housing for a 15-year compliance period, beginning with the first year of the credit period The amount of the credit for any tax year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. Buildings subject to the 70-percent rule should yield a 9-percent credit, and buildings subject to the 30-percent rule should yield a 4-percent credit, although the credit amounts	Sec. 42 The Tax Cuts and Jobs Act retains LIHTC. Under the proposed provision the volume cap 9 and 4 percent LIHTC are retained. Tax-exempt private activity bonds, including multifamily bonds are preserved.	**Comments:** The Tax Cuts and Jobs Act retains the LIHTC program, which encourages businesses to invest in affordable housing so families, individuals, and seniors can find a safe and comfortable place to call home. The bill also preserves tax-exempt private activity bonds, including multifamily bonds. The 25% basis boost is intended to offset the cost of the 9% LIHTC rural housing provision. **Recommendation:** While LOCUS supports the protection of LIHTC, we believe that the program must continue to be enhanced amidst the current low-tax environment in order to maintain current affordable housing production levels. The program will continue to encourage the investment of private equity in the development of affordable rental housing for low-income households.

	depend on the applicable interest rate used for discounting the building's basis for the particular tax year.		
Solar Tax Credit	(48 U.S. Code) 30% credit for residential energy efficient property would be extended for all qualified property placed in service prior to 2022, subject to a reduced rate of 26% for property placed in service during 2020 and 22% for property placed in service during 2021. The provision would be effective for property placed in service after 2016.	The Tax Cuts and Jobs Act makes no changes to the current U.S. Code.	**Recommendation:** Tax credits that encourage sustainable housing development should be addressed by this legislation. LOCUS supports sustainability incentives that reduce the costs of owning and maintaining a home.
New energy efficient home credit	(26 U.S. Code § 45L) Under current law, an eligible contractor could claim the new energy-efficient home credit for the construction of a qualified new energy-efficient home prior to 2014. The credit was equal to either $1,000 or $2,000-depending on whether the credit met a 30-percent or 50-percent reduction in heating and cooling energy consumption	No direct mention of energy efficient home credits in the Tax Cuts and Jobs Act. The bill allows the deduction to remain expired.	**Comments:** Tax credits that support new energy efficient homes should be addressed by this legislation. LOCUS encourages sustainable development that ultimately leads to lesser costs of owning and maintaining a home. **Recommendation:** LOCUS does not support the exclusion of new energy efficient home credits or the phase out of residential energy efficient property credits from the final Tax Cuts and Jobs Act.

	NOTE: The credit expired at the end of 2013.		
Historic Tax Credit	(26 U.S. Code § 47) A taxpayer may claim a credit to rehabilitate old and/or historic buildings. A 20-percent credit is allowed for qualified rehabilitation for a certified historic structure. A 10-percent credit is allowed for qualified rehabilitation for a qualified rehabilitated building. To qualify for the 10-percent credit, the rehabilitation expenditures during the 24-month period selected by the taxpayer and ending within the tax year must exceed the greater of the adjusted basis of the building (and its structural components) or $5,000.	Sec. 47 The Tax Cuts and Jobs Act provides a 20% credit for qualified rehabilitation expenditures with respect to a certified historic structure. The credit can be claimed ratably over 5 years, beginning in the taxable year in which a qualified rehabilitated structure is placed in service. The 10% credit for structures other than certified historic structures is eliminated. This provision is effective for tax years beginning after December 31, 2017. Qualified rehabilitation expenditures under certain phased out rehabilitations will occur over a 60-month period. The credit would continue to apply to expenditures incurred through the end of a 24-month or 60-month period of qualified expenditures, which would have to begin within 180 days after January 1, 2018.	**Comment:** LOCUS welcomes the Senate legislation's preservation of the 20% rehabilitation tax credit. Rehabilitating existing buildings can reduce costs for municipalities and add to the local tax base. However, its ratable application over five years hinders the flow of private investment into American communities. **Recommendation:** LOCUS recommends converting this tax credit to a Neighborhood Rehabilitation and Investment Credit that includes entire redevelopment projects and private investment in public infrastructure, expands to residential and mixed-use, and is scalable from 15-35% based on the amount of attainable housing provided. Rehabilitating existing buildings can reduce costs for municipalities and add to the local tax base. Expanding the tax credit will help revitalize entire neighborhoods, not just individual buildings.
New Markets Tax Credits	(26 U.S. Code § 45D)(Sec. 3406)	The Tax Cuts and Jobs Act makes no change to the New Markets Tax	**Comment:** New Market Tax Credits bring private capital into low-income communities and encourage the

	Certain qualifying taxpayers may claim a 5-percent credit per year for the first three years of investments in, and a 6-percent credit per year for the next four years of investments in qualified community development entities, which generally intend to serve low-income communities and low-income individuals. The new markets tax credit is set to expire on December 31, 2019. No amount of unused allocation limitation may be carried to any calendar year after 2024.	Credits provision currently contained in the U.S. Code. The legislation allows these provisions to expire on December 31st, 2019.	rebuilding and revitalization of America's neighborhoods by private capital. **Recommendation**: While LOCUS supports the inclusion of these tax credits in the final Tax Cuts and Jobs Act, the coalition urges Congress to make New Markets Tax Credits permanent. These credits break the cycle of disinvestment by attracting the private investment necessary to reinvigorate disinvested and struggling local communities.
Private activity bonds	(26 U.S. Code § 141) Private activity bonds (PABs) are excluded from gross income (and thus exempt from tax). The proceeds of PABs finance the activities of, or loans to, private parties, with indirect benefits accruing to the State or locality that issues the bond. Most PABs are subject to a single, aggregate national volume cap that is allocated	The final legislation retains the ability of issuers and borrowers to benefit from private activity bonds (such as qualified 501(c)(3) bonds and exempt facility bonds), as outlined in the existing U.S. Code. Note: This bill will eliminate advanced refund bonds.	**Comment:** Private activity bonds have traditionally funded a significant number of projects, and is estimated to finance more than half of all LIHTC-financed affordable homes annually. **Recommendation:** LOCUS supports the preservation of tax exemption for private activity bonds, including multifamily tax-exempt bonds.

	annually among States by population, while other PABs have separate volume caps. For calendar year 2017, the per-State volume cap is the greater of (1) $100 multiplied by the State population, or (2) $305,315,000. These amounts are indexed for inflation. Some State and local governments issue PABs to finance owner-occupied residences.		
Qualified Opportunity Zones	In the past, the Code has provided several incentives aimed at encouraging economic growth and investment in distressed communities by providing Federal tax benefits to businesses located within designated boundaries. These include; a federal income tax credit that is allowed in the aggregate amount of 39% of a taxpayer investment in a qualified community development entity (CDE); allowed to a taxpayer who makes a “qualified equity investment” in a CDE which	Secs. 1400Z-1 and 1400Z-2 The final legislation allows for the designation of certain low-income community population census tracts as qualified opportunity zones for a period of ten years. The chief executive officer of the State (including the Mayor of DC) may submit nominations for a limited number of opportunity zones to the Treasury Secretary for certification and designation. The first incentive allows for the temporary deferral of inclusion in gross income for capital gains that	**Comments:** On the surface, these initiatives seek to reduce unemployment and generate economic growth by attracting capital to distressed community development funds across the country. However, the legislation allows only a limited number of opportunity zones to be created in every state. If the number of low-income communities in a state is less than 100, that state’s governor may designate up to 25 tracts, otherwise they may designate tracts not exceeding 25% of the number of low-income communities in the state.

	further invests in a "qualified active low-income community business." The credit is allowed over seven years, five percent in each of the first three years and six percent in each of the next four years. It may be recaptured under certain conditions.	are reinvested in a qualified opportunity fund. The second incentive excludes from gross income the post-acquisition capital gains on investments in opportunity zone funds that are held for at least 10 years. There is no gain deferral available with respect to any sale or exchange made after December 31, 2026, and there is no exclusion available for investments in qualified opportunity zones made after December 31, 2026.	Furthermore, the provision does not target development projects directly, rather, captures all assets in general funds. LOCUS supports incentives that encourage private capital investment in American neighborhoods in need of economic and infrastructural revitalization. However, the coalition does not support an imposed ceiling on opportunity. **Recommendation:** LOCUS welcomes the creation of private investment opportunities in distressed neighborhood. The coalition encourages the legislation to expand the scope of these opportunity zones and offer more concrete language regarding their operation and upkeep. Furthermore, LOCUS reminds lawmakers that the qualified economic zones should operate alongside existing successful development incentives, not instead of or against them.
Empowerment zones and enterprise communities	The tax benefits available to designated zones included: 1. A 20-percent wage credit available to employers for the first $15,000 of qualified wages paid to an	No mention of empowerment zones and enterprise communities in the House's Tax Cuts and Jobs Act **Note:** The HUD/ USDA Community Renewal Initiative that included the upkeep of empowerment zones	**Recommendation:** LOCUS encourages initiatives that promote local economic growth and development. Provisions relating to empowerment zones and enterprise communities should be reinstated or

	employee who was a resident and performs substantially all employment services within the Empowerment Zone; 2. Expanded tax-exempt financing by State and local governments for certain zone facilities as well as zone academy bonds for certain public schools located in an Empowerment Zone; and 3. Deferred recognition of gain on the sale of qualified Empowerment Zone assets held for more than one year and replaced within 60 days by another qualified asset the same zone. ● The Enterprise Community designations generally expired at the end of 2004. ● The Empowerment Zones designation expired after 2013.	**and enterprise communities expired as of December 31st, 2016. The new tax code allows these initiatives to remain expired.**	consolidated into other community development incentives.
Renewal communities	(26 U.S. Code § 1400E) The tax benefits included: (1) up to $12 million to be allocated by a State to	No mention of Renewal Communities in the Tax Cuts and Jobs Act	**Recommendation:** These initiatives seek to reduce unemployment and generate economic growth through the designation of federal tax incentives and awards of grants to

	each Renewal Community for commercial revitalization expenditures for which the taxpayer may elect either to deduct one-half of the commercial revitalization expenditures for the tax year the building is placed in service or amortize all the expenditures ratably over a 120-month period; (2) (2) a zero-percent capital gains rate with respect to gain from the sale of certain Renewal Community assets for gains attributable to the period between 2002 and 2014 (inclusive), provided that the property was held for more than five years; and (3) Access to zone academy bonds for certain public schools located in an Empowerment Zone.	**Note:** The HUD/ USDA Community Renewal Initiative that included the upkeep of renewal communities expired as of December 31st, 2009. The new tax code allows these initiatives to remain expired.	distressed communities. Provisions relating to renewal communities should be reinstated or consolidated into other community development incentives.

Short-term regional benefits	(26 U.S. Code Chapter 1) The tax benefits for the Liberty Zone, located south of Canal Street, East Broadway, and Grand Street in the Borough of Manhattan in the City of New York, included: (1) Additional 30-percent first-year depreciation for qualified Liberty Zone property placed in service before 2006 (2009 for certain real property); (2) Enhanced tax-exempt bond financing for New York Liberty Bonds issued before 2014; and (3) Five-year replacement period for compulsory or involuntarily converted Liberty Zone assets as a result of the terrorist attacks. The Gulf Opportunity Zone (GO Zone) was designated to provide relief for areas damaged by Hurricanes Katrina, Rita, and Wilma. The primary tax benefits there included: (1) enhanced tax-exempt bond financing for Gulf Opportunity Zone	No mention of short-term regional benefits in the Tax Cuts and Jobs Act.	**Comment:** As man-made and natural disasters continue to plague the country, it is imperative that federal legislation helps facilitate the timely economic recovery of these affected regions. Special tax benefits should be made available to recovering regional economies that subsidize redevelopment costs after specific disasters. **Recommendation:** LOCUS encourages lawmakers to consider short-term regional benefits as an important economic and development tool. We call for a more consistent approach to disaster tax benefits. This way, affected communities will not be caught up in retroactive disaster tax benefits that slow the recovery process.

	Bonds issued before 2012; (2) five-year carryback of certain losses resulting from GO Zone damages; (3) increased rehabilitation credit for qualifying expenditures before 2012; (4) special education tax benefits for individuals attending educational institutions in the GO Zone in 2005 and 2006; and (5) certain housing tax benefits for residents of the GO Zone in 2005 and 2006.		