

Crain's New York Business

<https://www.crainsnewyork.com/markets/tax-loopholes-benefiting-wall-street-and-nyc-real-estate-survive-house-plan?>

September 15, 2021 02:04 PM

Tax loopholes benefiting Wall Street and real estate survive in House plan

[AARON ELSTEIN](#)

Senior Reporter - Finance

If you work in finance or [real estate](#), you're mighty pleased to see two lucrative loopholes survived in the tax plan released this week by the House Ways and Means Committee. Middle-class New Yorkers hoping for a little relief have less to be happy about, at least for now. Nothing's over till it's over, but now that Congress and the Biden administration have something concrete to bargain over, here's the state of play:

Carried interest

This is the secret sauce behind the vast wealth of private-equity or hedge-fund managers and why Warren Buffett's tax rate is [lower than his secretary's](#).

Carried interest is the slice of an investment firm's profits that executives take home as pay. It's taxed at the advantageous capital-gains rate rather than as ordinary income. It became controversial around the time of Blackstone Group's initial public offering in 2007, when people realized how much the firm's partners made from carried interest.

The loophole has been around for decades and rumors of its demise have always been exaggerated. Before the House revenue plan emerged, John Cassidy, an economics writer at *The New Yorker*, tweeted he would "give up" if the carried interest loophole survived. But the only change proposed this week was to extend the minimum holding period for an investment from three years to five.

"Paging the U.S. Senate," Cassidy [tweeted](#). "Please save my career."

1031 exchanges

This loophole is cherished by the real estate industry. It enables [real estate](#) investors to swap one property for another without [paying taxes](#) on the transaction. There's no limit on how many trades can be made, and if an investor dies while holding appreciated real

estate, heirs inherit the property on a step-up basis—meaning they pay no taxes on the gain when they sell.

1031 exchanges were created for farmers in the 1920s and expanded to commercial real estate in 1990. Today 20% of commercial real estate transactions are 1031 swaps. One of the most famous beneficiaries was Donald Trump, who 17 years ago used a 1031 to acquire 30% of 1290 Sixth Avenue, his company's [most valuable](#) real estate holding.

The Biden administration wanted to rein in 1031s by eliminating the benefits when gains exceeded \$500,000. Real estate lobbyists fought back, and the Biden proposal wasn't included in the House Democrats' plan this week. But just in case the law changes, dealmakers say real estate investors are rushing to complete 1031 exchanges before the year ends.

In a statement, the Real Estate Board of New York said: "The infrastructure investments driven by 1031 exchanges are responsible for an immense amount of economic activity that creates good jobs [and] increases the supply of multifamily rental housing."

SALT

Restoring the full [state and local tax deduction](#) is a priority for lawmakers in high-tax states including New York, New Jersey and California. Few issues divide Democrats such as this one and plenty struggle to understand why high earners on the coasts should get a benefit that's pretty regressive. There was no SALT relief in this week's package as Democrats punted the issue to a more deft politician, Nancy Pelosi.

SALT relief is expensive. Repealing the cap imposed in 2017 would cost \$400 billion between next year and 2025, tax analysts say. But the benefit could be reinstated for households with incomes under \$400,000, which would affect 85% of people involved with this issue.

New York, meanwhile, has enacted a law that helps businesses minimize the cost of losing [SALT](#). The statute allows partnerships and pass-through entities to deduct state taxes from federal income with no limitations.

"It doesn't help wage earners," said Peter Buell, a partner at accounting firm Marcum.

Analysts at Evercore ISI say partial SALT reinstatement may be necessary to solidify Democratic support for the \$3.5 trillion infrastructure bill. The SALT limits imposed by the Trump administration are to sunset by 2025.