



THE MILLIONAIRES GIVEAWAY: EXPLAINING THE LOOPHOLE AND THE HEROES ACT REPEAL

The \$135 billion Millionaires Giveaway was included in the [CARES Act](#), the \$2.2 trillion financial aid package signed into law in late March. The [HEROES Act](#), sponsored by Speaker Nancy Pelosi and House Democrats, fully repeals the Millionaires Giveaway, saving taxpayers most if not all of the revenue to aid families, communities, and the health care system. The exact amount of the savings (it could be higher) will be known when the Joint Committee on Taxation releases a revenue estimate. Reps. Lloyd Doggett and Rosa DeLauro and Sen. Sheldon Whitehouse have led the repeal fight through [H.R. 6579](#) and [S. 3640](#).

- **The Millionaires Giveaway gives wealthy business owners a huge tax break unrelated to fighting the pandemic or its resulting recession.** It allows them to use business losses (net operating losses, or NOLs) in 2018, 2019 and 2020 to seek refunds on previously paid income taxes. It will [cost \\$135 billion](#) over 10 years, according to the Joint Committee on Taxation (JCT). JCT found that this year it gives [over 80% of the benefits](#)—an average tax cut of \$1.6 million—to [43,000 noncorporate business owners](#) already making over \$1 million. The \$135 billion cost is over three times what the CARES Act spends on [safety net programs \(\\$42 billion\)](#), more than it gives to hospitals and public health (\$100 billion) and nearly as much as goes to hard-pressed states and cities (\$150 billion).
- **The Millionaires Giveaway temporarily revokes one of the rare revenue-raising restrictions placed on the wealthy in the 2017 Trump-GOP tax law, otherwise a [bonanza for the rich](#).** The law [capped at \\$500,000 per couple](#) (\$250,000 per individual) the amount of business losses permitted to offset personal, or non-business income. It placed [other limits](#) on the use of business losses as well. This was meant to partially pay for many other handouts to the wealthy featured in the law, including a [40% cut in the corporate tax rate](#) and a reduction in the top tax rate paid by [noncorporate business owners](#) from 39.6% to an effective 29.6%. The Millionaires Giveaway [lifts that limit](#) not only in this COVID-ravaged year, but for 2019 and 2018 as well, when losses cannot be blamed on the pandemic. Another section of the CARES Act allows losses to be “carried back” to prior, profitable years—as far back as 2013—to generate refunds on taxes already paid. Because prior to 2018 tax rates were higher than they are now, current losses applied to taxes paid then will generate higher refunds, a manipulation known as “rate arbitrage.”
- **The loophole expands the ability of the richest noncorporate business owners—including [hedge fund investors and real estate tycoons](#) like the Trumps—to manipulate business losses to avoid taxes.** The taxable income of noncorporate business owners is a blend of personal income and business results. Business losses can offset personal, or non-business, income gains to lower total income and therefore taxes. Wealthy business owners often have substantial nonbusiness income, from fat salaries or stock gains, so business losses are particularly valuable to them. Hedge fund investors bear little resemblance to typical business owners yet get to exploit their funds’ losses in this way. The reported “losses” of real estate investors are often only on paper as properties actually gain in value.

- The HEROES Act would close the \$135 billion loophole created in the Trump-GOP tax law and restore the dollar limits on business losses and amend other parts of the CARES Act.** The loophole lets wealthy business owners use business losses to offset personal, or non-business income above \$500,000 per couples (\$250,000 for individuals) and seek refunds on previously paid income taxes. Moreover, only losses suffered this year and last—but not in 2018—would be eligible for “carryback” for both businesses and corporations, and those losses could only be carried back as far as 2018 (not to five years earlier), when tax rates were the same as now. Businesses paying their executives too much would not qualify. (Corporations benefitting under different loss rules in the CARES Act would be similarly disqualified if they bought back too much of their own stock.)

Below is a table comparing the CARES Act and HEROES Act provisions.

<p style="text-align: center;">Current Law / CARES Act (HR 748)</p>	<p style="text-align: center;">HEROES Act</p>
<p>Total Revenue Loss over 10 years: \$160 billion per Joint Committee on Taxation (JCT)</p>	<p>Total Revenue Gain from CARES Act: TBD, but could be at least \$135 billion</p>
<p>Sec 2304 – Permits excess business losses (Net Operating Losses, or NOLs) generated by pass-through businesses in 2020, 2019 and 2018 to offset non-business income over \$500,000 for joint filers (\$250,000 for others). Would lose \$135 billion; JCT determined 82% of the benefit would go to those making over \$1 million in 2020, with an average tax cut of \$1.6 million this year.</p>	<p>Sec 20301 -- Repeals Sec 2304 and permanently prohibits pass-through businesses from using losses to offset non-business income over \$500,000 for joint filers (\$250,000 for others).</p>
<p>Sec 2303 – Allows both C-corps and pass-through businesses to carry back NOLs generated in 2020 and the pre-pandemic years of 2018 and 2019 to offset income earned during a 5-year period, including 3 pre-TCJA years when the corporate income tax rate was 35% and the top personal income tax rate was 39.6%, (thereby creating a tax arbitrage opportunity with the current 21% corporate rate and 29.6% top pass-through rate). Would lose \$25 billion over 10 (loses \$89 billion in first two years after which it becomes revenue positive).</p>	<p>Sec 20302 -- Limits the NOL carry-back period to 2018 and 2019, removing the tax arbitrage opportunity created by the CARES Act.</p>
	<p>Disallows businesses to carry back losses generated in 2018 but permits NOL carry-backs from 2019 (a pre-pandemic year) and 2020.</p>
	<p>Permits businesses both big and small to carry back NOLs.</p>
<p>Ensures that companies paying excessive executive compensation and engaging in significant stock buybacks do not qualify for this relief.</p>	