



SECTION 1

TAX POLICY

Fulfilling the Promise of Pro-Growth Tax Reform Requires Attention to Implementation and Rulemaking in 2018

The Roundtable is eager to work closely with Congress and the Treasury to ensure that the Tax Cuts and Jobs Act, the most far-reaching tax legislation in over 30 years, is implemented effectively to achieve Congress's reform objectives—capital formation, productive investment, appropriate risk-taking, and job creation.

The real estate industry is one of the leading job creators—employing more than one in every ten full-time U.S. workers—and taxes on real estate represent close to 70 percent of local tax revenues. The expansive Tax Cuts and Jobs Act will influence all aspects of real estate activity, including development, construction, ownership, and management. The positive impact of the tax changes is already being

reflected in the economy. However, the regulatory rules for new provisions, such as the 20 percent deduction for pass-through business income, will be critically important to the long-term success of the new tax law. Going forward, Treasury rulemaking and guidance will influence the ability of real estate to continue driving economic activity and job creation.

The key regulatory priorities relate to several new provisions affecting the taxation of real estate investment. Treasury rules should ensure that the real estate exception to the new limitation on business interest seamlessly allows real estate investors to continue deducting their interest expense. Guidance should also clarify a number of

issues associated with the new pass-through deduction. For example, partners should be permitted to aggregate the income and deductions from their real estate activities for purposes of the new pass-through deduction. Finally, Treasury or Congress should clarify the cost recovery rules for property improvements



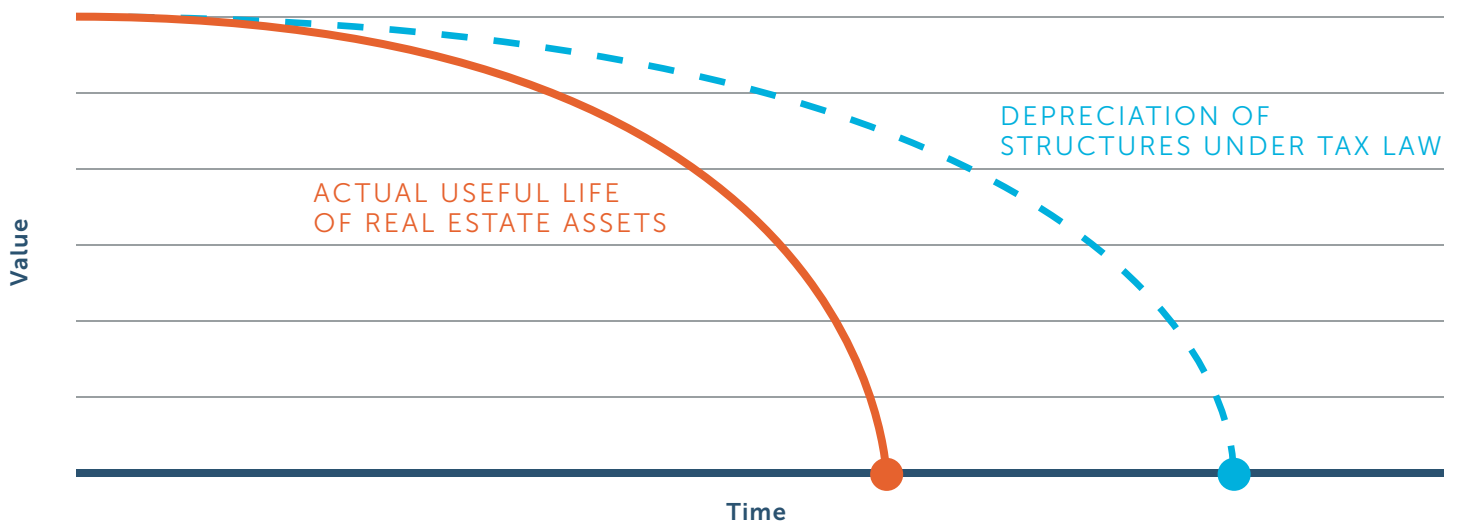
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Outside academic and economic research and expert analysis provided by The Real Estate Roundtable made an important contribution to the trajectory of the tax reform debate. In 2018, The Roundtable will work closely with the Congressional and Executive Branches to advise on key regulatory questions related to pass-through income, business interest deductibility, like-kind exchanges, cost recovery, and others.

Tax Law Should Align Cost Recovery Rules with the Actual Useful Life of Real Estate Assets

Economic depreciation refers to the decline in the value of an asset as it ages. It measures not just physical wear and tear, but also obsolescence—the loss that comes as preferences change, technology advances, and the quality of new assets improves. The Roundtable strongly supported the decision of Congress to not allow the full expensing of structures, which would have been overly stimulative, leading to

STRUCTURES OFTEN DEPRECIATE FASTER THAN 2017 TAX LAW RECOGNIZES






Causes of Faster Depreciation: ■ Changing Tastes ■ Technology Advances ■ Quality of New Assets



▲ (R-L) House Ways and Means Committee Chairman Rep. Kevin Brady (R-TX) with Chair of the Tax Policy Subcommittee of House Ways and Means Committee Rep. Peter Roskam (R-IL) discuss tax reform at a Roundtable Meeting.

IMPACT OF THE ABSENCE OF INTERNET SALES TAX ON LOCAL COMMUNITIES

 SALES TAX REVENUE	 PROPERTY TAXES	 LOCAL EMPLOYMENT	 CRITICAL COMMUNITY SERVICES
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uneconomic investment. The Tax Cuts and Jobs Act generally maintains real estate investors' ability to recover costs accrued over time through depreciation. In some cases, however, the time periods attached to real estate will be now longer than they used to be and still do not reflect the useful life of the assets they govern. Tax rules should generally reflect the real economics of underlying transactions, and in the real world, structures depreciate much more quickly than the current tax rules recognize. As Congress looks to perfect its reform in coming sessions, the real economics of real estate value and investment should drive relevant time periods for depreciation of commercial property, residential property, interior and exterior improvements.

Congress Should Create a Level Playing Field for Main Street Retailers and Allow States to Collect Sales Taxes on Internet-Based Transactions

Under current law, states may only compel retailers to collect sales tax on goods they sell if the retailer has a physical presence in the state. As a result, internet retailers enjoy an unfair competitive advantage because state lawmakers cannot compel online retailers who sell goods into their state to pay sales tax, even if the tax is owed. This discriminatory tax treatment in favor of online sellers damages Main Street businesses, reduces employment and puts pressure on states to raise property taxes or other taxes to make up for the shortfall. It also undermines state and local governments' ability to finance critical public services for local communities.

New restrictions on the federal deductibility of state and local taxes enacted in tax reform will put additional pressure on the revenue base of state and local governments. Congress should assist all states in leveling the playing field for "brick and mortar" retail stores by passing legislation authorizing

states to collect sales taxes owed. In January, the Supreme Court agreed to hear a case, *South Dakota vs. Wayfair*, challenging its 1992 *Quill* decision imposing the "physical presence" standard that prevents states from collecting sales taxes on internet transactions. Along with other real estate organizations, the Roundtable submitted an amicus brief urging the Supreme Court to grant *cert* in



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the *Wayfair* case and will continue to support states' coordinated legal challenge to *Quill* as the case proceeds. Absent reform or a successful legal challenge, state and local governments will continue to lose out on tens of billions of dollars.¹ Congress' failure to act has led several states to pursue their own statutes and legal challenges aimed at overturning *Quill*. The Roundtable strongly supports these efforts to level the playing field for all retailers.

Preserving, Enhancing Incentives for Capital Formation and Investment Will Remain Critical to Long-Term Economic Growth

The temporary nature of the noncorporate provisions the Tax Cuts and Jobs Act guarantees that the new law will be subject to regular review and consideration. New and novel provisions important to real estate capital formation and investment, such as the 20 percent deduction for qualified pass-through business income, will be sustained only they are accomplishing

their objectives and widely understood. If the provisions are perceived as overly abused or "gamed" by taxpayers, Congress will not extend them beyond their scheduled expiration date (generally, the end of 2025). The Real Estate Roundtable will work with policymakers to strengthen and buttress provisions like the pass-through deduction so that they become integral parts of the tax system.

Tax reform left unchanged other key elements of the tax code. The top individual capital gains rate remains 20 percent. The 3.8 percent tax on net investment income remains in place. The Foreign Investment in Real Property Tax Act (FIRPTA) will continue to constrain foreign investment in U.S. real estate and infrastructure by discriminating against real estate as an asset class. Legislation considered early in 2017 would have repealed the 3.8 percent tax on net investment income. In 2015, Congress made helpful changes to the FIRPTA by increasing the limit on foreign ownership of publicly traded U.S. REITs and exempting foreign pension funds from FIRPTA altogether. More can and should be done. Revisiting and reevaluating our tax rules related to capital formation and investment will remain a Real Estate Roundtable policy priority in 2018.

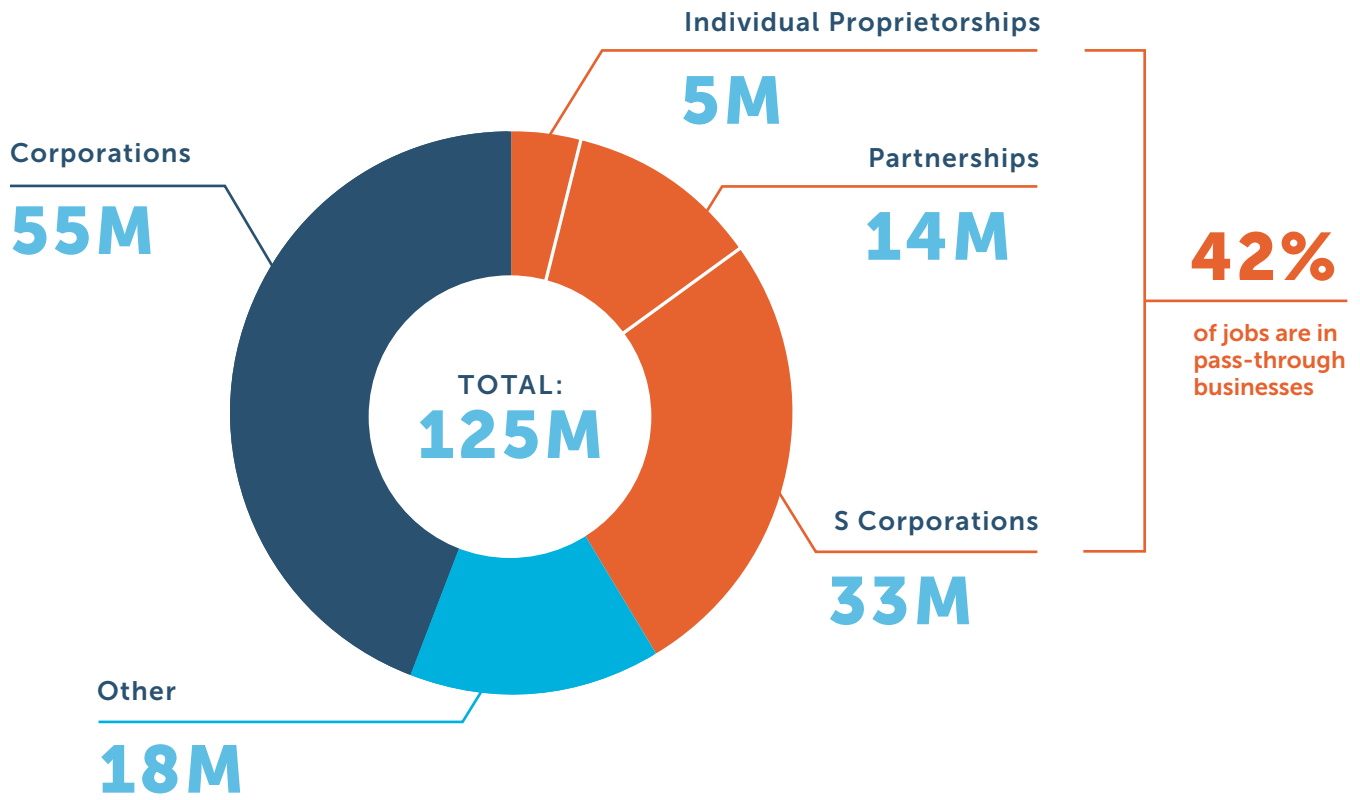
▼ Sen. Ben Cardin (D-MD) member of the Senate Finance Committee.



¹ The National Conference of State Legislatures and International Council of Shopping Centers, NCSL and ICSC, March 2017 (In 2015, nearly 26 billion dollars in state and local sales taxes from online sales went uncollected.)

PASS-THROUGH BUSINESSES REPRESENT A LARGE AND GROWING SHARE OF JOBS IN THE USA

Paid Employees in USA 2015



Source: US Census Bureau, "Geography Area Series: County Business Patterns by Legal Form of Organization and Employment Size Class: 2015," 2017.

▼ (R-L) Secretary of the U.S. Department of Treasury Steven Mnuchin, and Roundtable President & CEO Jeffrey D. DeBoer.

