TAX POLICY

The Roundtable advocates for tax laws and regulations that reflect the economics of real estate assets and contribute to strong property values and well-served, livable communities. During the 2021 fiscal year, two major developments dominated The Roundtable's tax policy activities. The first was the ongoing effects of the COVID-19 pandemic. The Roundtable consistently has encouraged policymakers to adopt tax policies that would reduce the economic hardship for individual and business tenants, minimize the risk of broad disruption to real estate markets, and accelerate the safe and healthy reopening of the economy. The second development was the resetting of the tax agenda in Washington following the election of Joe Biden as President and the consolidation of Democratic control of Congress. The Roundtable has worked in Washington to support the Administration's renewed emphasis on investing in critical priorities and needs, such as infrastructure and housing, while also underscoring the importance of preserving current tax policies that promote capital formation, risk taking, and productive private investment. Outside Washington, The Roundtable has raised awareness of the potential consequences of tax changes under consideration, harnessed experts to provide credible, fact-based tax policy research, and developed broad-based coalitions to advocate for policies that support the rational taxation of real estate and capital investment.

Promoting and Advancing Meaningful Tax Relief to Lessen Pandemic-Related Hardships and Accelerate the Recovery

As the COVID-19 pandemic swept across the Nation in the spring and summer of 2020, The Roundtable engaged with policymakers to identify tax policies to help residents and business tenants survive government-mandated closures and a dramatic decline in economic activity. The Roundtable supported aggressive legislative measures that were eventually enacted into law, including the CARES Act, the omnibus appropriations bill at the end of 2020, and the American Rescue Plan in early 2021.

The Roundtable successfully pursued a number of tax regulatory actions to provide relief to real estate owners, tenants, and the overall economy. These initiatives sought to ensure that implementing rules from Treasury fully reflected the legislative intent underlying the CARES Act and related legislation. Several of these Roundtable proposals were adopted and provided timely regulatory relief for specific types of transactions:

LOSS CARRYBACKS AND AMENDED RETURNS.

The CARES Act included provisions to help businesses stay afloat during the pandemic by generating deductions in prior tax years that could be "monetized" in 2020 through the filing of amended tax returns. An initial interpretation of the law, however, largely excluded real estate because of the interaction of the CARES Act with existing partnership audit rules. The Roundtable urged Treasury and IRS to use their regulatory authority to provide relief, and a subsequent IRS Revenue Procedure clarified that partnerships could file amended returns and receive the full benefits of the legislation.

REAL ESTATE PARTNERSHIPS: A POWERFUL ENGINE OF ECONOMIC ACTIVITY

REAL ESTATE PARTNERSHIPS	2.02 Million
Number of Partners	8.6 Million
Value of Assets	$7.6 Trillion
Annual salary and wage compensiation	$28 Billion
Net rental income	$46 Billion
Net long-term capital and sec. 1231 gain	$247 Billion
Incom allocated to partners	$311 Billion

Source: IRS Statistics of Income, Tax Year 2018

BUSINESS INTEREST LIMITATION.

The Tax Cuts and Jobs Act created a new limitation on the deductibility of business interest, but allows real estate businesses to elect out, which many did in 2018. The election is irrevocable, and the price of the election is longer cost recovery periods for real property and improvements. The CARES Act liberalized the limitation on the deductibility of business interest for tax years 2019 and 2020. However, the law did not allow real estate businesses to go back and change their election out of the regime. The Roundtable asked the IRS to allow real estate businesses to revoke elections made in 2018 and 2019 and the IRS issued the requested relief soon thereafter.

LIKE-KIND EXCHANGES.

The travel restrictions, government closures, and general market conditions created by the pandemic complicated taxpayers' ability to comply with the strict statutory deadlines associated with like-kind exchanges. Following a request by The Roundtable and 21 other national real estate organizations, the IRS extended the deadlines that apply for identifying replacement property and closing on like-kind exchange transactions.

OPPORTUNITY ZONES.

For similar reasons, The Roundtable sought temporary relief from the various deadlines and compliance testing dates associated with investing in an Opportunity Zone. The IRS issued multiple sets of guidance providing pandemic-related relief for qualified Opportunity Funds and investors.

DEBT RESTRUCTURINGS.

With the support of The Roundtable, the Treasury Department and the IRS issued helpful new revenue procedures empowering lenders to modify loans held in trusts and mortgage-backed securities without triggering immediate tax liability for the lender.

Beyond the tax regulatory actions and legislation enacted by Congress, The Roundtable continues to push for a number of targeted tax legislative initiatives to address specific concerns.
Within real estate, tenants in certain types of assets are particularly challenged. Some property owners organized as real estate investment trusts (REITs) would like to do more, on their own, to help provide a lifeline to struggling commercial tenants to preserve jobs. The Retail Revitalization Act (H.R. 840) introduced by Representatives Brad Schneider (D-IL) and Darin LaHood (R-IL) would help landlords

keep retail businesses alive, and save jobs in the process, by liberalizing the REIT related-party rules that taint rental income received by a REIT from a tenant with whom it has an equity or debt interest. The economic benefit of the change would greatly outweigh any minor, short-term impact on federal revenue. The bill is now cosponsored by nearly half of the members of the House Ways and Means Committee and may be introduced in the Senate soon.

Commercial real estate owners and other businesses need greater flexibility to work with their banks and other lenders to modify outstanding loans without triggering cancellation of debt income. Current tax law discourages debt restructurings and workouts by subjecting borrowers to immediate income tax on discharged debt. Congress has already stepped in to provide relief for loan forgiveness related to the Paycheck Protection Program and other pandemic lending programs. The Roundtable is urging Congress to enact temporary legislation that defers tax on discharged debt by allowing taxpayers to exclude the income if they reduce the basis of their assets.

The Roundtable is working to correct a tax problem that adversely affects new, vertical **condominium construction.** Current tax accounting rules require developers to use the percentage-of-completion method of accounting, which results in tax liability during the construction process if the developer is preselling units and accepting deposits prior to completion of the building. Condominium construction should qualify for the completed contract method of accounting, which would align tax liability with the actual closing of contracts and the transfer of units to buyers. We anticipate introduction of corrective legislation by senior members of the House Ways and Means Committee in the near future.

Congress created **Opportunity Zones** in the Tax Cuts and Jobs Act of 2017 to spur long-term capital investment and job creation in low-income, economically distressed communities. The Real Estate Roundtable has played an active role in the OZ rule-making process, and has put forward several legislative recommendations designed to further enhance and improve the new incentives. Recommendations include: (a) allowing opportunity funds to raise capital from all sources, not just gain rolled over from a recently disposed investment; (b) providing that a 50 percent increase in the basis of a building constitutes a substantial improvement of the property; and (c) codifying the tax rate on deferred gain and extending the investment deadlines for the tax benefits. The Roundtable

TOTAL CUMULATIVE IMPACTS OF THE E-QUIP TAX PROPOSAL

130,000 net additional **JOBS** (total years of employment)

$15 billion energy-bill **SAVINGS** (present value)

$11 billion added business and federal **INVESTMENT**

100 million tons of CO2 **EMISSIONS** avoided

Source: American Council for an Energy-Efficient Economy

ECONOMIC ACTIVITY SUPPORTED BY REAL ESTATE LIKE-KIND EXCHANGE RULES, 2021

	Businesses that make use of the like-kind exchange rules	Suppliers and related consumer spending	TOTAL
EMPLOYMENT	260,000	308,000	**568,000**
LABOR INCOME	$11 Billion	$16.5 Billion	**$27.5 Billion**
VALUE ADDED	$22.4 Billion	$32.9 Billion	**$55.3 Billion**

Note: All estimates are for economic activity in the United States and are relative to the US economy in 2021. Labor income is a component of value added. Figures are rounded.

also supports the bipartisan efforts to improve OZ information reporting and transparency.

The Roundtable Commissions and Supports Groundbreaking Research

Over the past year, The Roundtable advanced new tax policy research, the findings of which have improved policymakers' understanding of the nexus between real estate-related tax changes and the consequences for jobs and economic growth.

Working with industry partners, The Roundtable supported new groundbreaking research by Professors David Ling (Univ. Fla.) and Milena Petrova (Syracuse U.) on the **economic impact of like-kind exchanges.** Developed using the most comprehensive database of US commercial real estate activity in existence, the research highlights the critical role that like-kind exchanges play in stabilizing rents, safeguarding property values and strengthening the economy. The study found that exchanges spur capital expenditures, increase investment, create jobs for skilled tradesmen and others, reduce unnecessary economic risk, lower rents, support property values, and generate substantial state and local tax revenue.

The Roundtable highlighted the study in letters to Treasury Secretary Yellen and the chairmen and ranking members of the congressional tax-writing committees. The letters underscored the many benefits of like-kind exchanges to the U.S. economy and the health of real estate markets.

The Roundtable commissioned a study by the American Council for an Energy-Efficient Economy (ACEEE) to analyze the economic and environmental impacts of the **Energy Efficient Qualified Improvement Property (E-QUIP) Act** (H.R. 2346). According to ACEEE's research, the E-QUIP Act's economic and environmental impacts would include 130,000 additional net job-years; $15 billion energy bill savings; and 100 million tons of carbon dioxide emissions avoided – or the equivalent emissions from 560,000 rail cars full of coal, or taking 22,000 cars off the road for one year. The Roundtable is leading a business coalition urging policymakers to include the legislation as part of any "green tax" package that may be folded into larger infrastructure spending legislation.

Alongside the Family Business Estate Tax Coalition, RER commissioned research from Ernst & Young (EY) regarding the economic impact of repealing step-up in basis. The research presents case studies illustrating the impact of repealing step-up in basis and taxing unrealized capital gains at death for family-owned businesses, including real estate, and estimates the macroeconomic impact of the proposed changes.

The Roundtable, in conjunction with other stakeholders, commissioned a second study from EY on the **economic contribution of the like-kind exchange rules** within the US economy. According to the report, like-kind exchange rules are supporting 568,000 – 710,000 jobs and $27.5 – $34.4 billion of labor income in the United States in 2021. In terms of economic output, like-kind exchanges will generate $55.3 - $69.1 billion in value added in the United States this year, while producing $7.8 billion in federal, state, and local taxes in 2021. The study notes that the greater investment resulting from like-kind exchanges results in more jobs, labor income and value added, not only at taxpayer businesses engaged in like-kind exchanges, but also at suppliers to those taxpayers, as well as businesses that rely upon consumer spending, such as retail stores, restaurants and entertainment. The author, Dr. Robert Carroll, previously served as Treasury's Deputy Assistant Secretary of Tax Analysis.

Industry Leadership and Membership Engagement

Despite the difficult working environment created by the pandemic over the past year, The Roundtable continued to engage members in its tax policy development process through the Tax Policy Advisory Committee (TPAC) led by Chairman Frank Creamer Jr. (FGC Advisors) and Vice Chair Kathleen Weiden (Lefrak Orgization).

TPAC is composed of the country's leading real estate tax professionals from private and public real estate businesses, prominent law and accounting firms, and national real estate trade organizations. TPAC working groups regularly meet with government officials to discuss emerging issues, draft industry-focused comment letters, and present at events around the country to raise greater awareness of how policy proposals could impact real estate and the broader economy.

In fact, the new virtual meeting environment brought increased participation for TPAC's meetings and working groups, enabling the committee to aid meaningfully on a number of policy issues over the past year, including:

- A detailed comment letter to the Treasury Department and IRS on proposed regulations implementing the 3-year holding period requirement for carried interests to qualify for long-term capital gain treatment. The letter included TPAC's recommended changes to the proposed regulations to bring the rules more in line with the legislative intent when Congress enacted section 1061.

- A discussion and consideration of tax legislative priorities affecting commercial real estate with Tiffany Smith, chief tax counsel for Senate Finance Committee Democrats and Andrew Grossman, chief tax counsel for House Ways and Means Committee Democrats.

- Working with policymakers, including the Congressional tax-writing committees, to preserve and improve tax rules that promote capital formation and the appropriate treatment of entrepreneurial activity and productive risk-taking.

Partnering with the New Administration to Advance Shared Priorities While Highlighting the Potential Unintended Consequences of Proposed Tax Changes

Leading up to the recent election, The Roundtable provided overviews of candidates' stances on tax issues and engaged with campaigns to discuss tax policy proposals, articulating arguments and rationales on the benefits of current tax rules. This included informing the Biden campaign of the negative and unintended consequences of certain tax proposals, such as eliminating the reduced tax rate on capital gains or repealing the ability to defer capital gain through like-kind exchanges. As political power in Washington shifted and Democrats consolidated their control over both the White House and U.S. Senate, The Roundtable has continued its advocacy for innovative, market-based tax policy solutions to issues such as housing availability, climate change, and access to capital.

In December, The Roundtable and 12 national real estate organizations sent detailed policy recommendations in a transition memo to President-elect Joe Biden and Vice President-elect Kamala Harris in the areas of COVID-19 relief, tax policy, sustainability, housing, immigration, and infrastructure, as well as others. Regarding tax policy, the industry emphasized that real estate income is taxed on a rational basis, with rules that are well-aligned with the economics of real estate assets and investment. Existing tax rules promote capital formation and help ensure that resources flow to productive, long-lasting investments that create jobs and improve communities. The tax code should continue to spur investment in commercial real estate through provisions that promote the efficient allocation of capital and support the development and rehabilitation of properties.

President Biden's tax agenda came into clearer focus following enactment of the American Rescue Plan in mid-March when the Administration's attention shifted to its jobs, infrastructure and human capital initiatives. Of particular concern, the President has proposed restricting like-kind exchanges, doubling the capital gains rate, taxing all carried interest as ordinary income, and imposing a new capital gains tax on unrealized gains at death.

As Chairman of the Senate Finance Committee Sen. Ron Wyden (D-OR) plays a principal role on Capitol Hill on tax, trade, and spending—and was receptive to The Roundtable's fact-based reports showing the link between real estate, the pandemic and tax policy.

In each of these areas, the Real Estate Roundtable is either leading or actively contributing to coalition campaigns aimed at raising policymakers' awareness of how these proposals, if enacted in their current form, could adversely affect jobs, capital formation, risk taking, and productive investment. On May 19, The Roundtable led an industry-wide submission to the tax-writing committees in conjunction with hearings in both the House and Senate on how to finance infrastructure investment. On May 27, The Roundtable coordinated a virtual briefing for Members of Congress and their staff on the importance of real estate like-kind exchanges. These efforts will deepen in the weeks ahead and in the new fiscal year as the debate over tax legislation intensifies.