The Real Estate Roundtable

Real Estate Taxation & the One Big Beautiful Bill Act

Tax Policy

Summary

In July 2025, after months of high-stakes negotiations, the 119th Congress passed the expansive One Big Beautiful Bill Act (OBBBA), a sweeping budget reconciliation package that overhauled tax policy and restructured federal spending. Overall, the final legislation advanced a range of policies that support capital formation, real estate investment, and housing development, as well as preserved longstanding tax rules vital to the commercial real estate industry.

Key Takeaways

- Crucial provisions from the Tax Cuts and Jobs Act of 2017 (TCJA) were extended or made permanent.
- Several harmful and misguided proposals raised during negotiations, such as the Section 899 "revenge tax", were left out of the final legislation.
- Measures that will drive growth and strengthen our communities, like restoration of bonus depreciation for property improvements and expansion of the low-income housing tax credit, were included in the law.
- Energy tax incentives implemented under the Inflation Reduction Act (IRA) have been scaled back.

OBBBA's Policy Implications for Commercial Real Estate

Extensions of TCJA Provisions and Other Key Policies

- **Section 199A:** Permanently extends a key feature of the tax code—the 20 percent deduction for pass-through business income. Over 95% of U.S. businesses are organized in pass-through form, and Section 199A helps maintain tax parity and a level playing field for millions of pass-through businesses, including 2 million real estate partnerships. The deduction applies to leasing income and other net operating income generated by commercial real estate. REIT dividends as per se eligible for Section 199A and will continue to automatically qualify for the deduction. The deduction reduces the top effective tax rate on qualifying income from 37% to 29.6%. OBBBA ends the temporary nature of the deduction, providing tax certainty for pass-through businesses planning long-term investments, such as real estate development and investment.

- **Opportunity Zones**: Permanently extends the Opportunity Zone (OZ) tax incentives, including the full exclusion of capital gain on OZ investments held for 10 years. Beginning in 2027, OBBBA provides a rolling, five-year deferral period for prior gain that is invested in an opportunity fund, ending the prior problem of a shrinking OZ tax incentive as the statutory recognition date for deferred gain approaches. The legislation provides for a re-designation of OZ census tracts by state governors every 10 years. It redefines low-income census tracts eligible for OZ designation as those with a median income of 70 percent of the statewide median level (as opposed to 80 percent). OZ investments would be eligible for a 10 percent basis bump-up after five years. The bill also establishes additional benefits for rural OZs, including a lower substantial improvement test for real estate projects, as well as transparency and reporting measures for all opportunity funds. Since their enactment in 2017, OZs have attracted over $120B in capital for low-income communities, with most investment going towards new housing and other productive real estate development.

- **Bonus Depreciation**: Reinstates (effective Jan. 20, 2025) and permanently extends immediate 100 percent expensing of qualifying capital expenditures, including: appliances, lighting and systems, fixtures, solar panels, leasehold improvements, and nonresidential interior improvements. Under prior law, bonus depreciation was phasing down and limited to a 40% expensing benefit in 2025, 20% in 2026%, and zero thereafter. The Tax Foundation estimates that this provision alone will boost GDP by 0.6% and create the equivalent of 145,000 full-time jobs.

- **Low-Income Housing Tax Credit:** Permanently increases the allocation of Low-Income Housing Tax Credits (LIHTCs) to states by 12 percent and permanently lowers the requirement for private activity bond financing for LIHTC projects from 50 percent to 25 percent. The latter provision will allow more affordable housing projects to receive tax credits without a direct allocation from the state. The accounting firm Novogradac estimates that the OBBBA changes to LIHTC will finance an additional 1.22 million affordable rental homes over the next decade (80,000 from the cap increase and 1,143,000 from the private activity bond change).

- **Business Interest:** The Tax Cuts and Jobs Act of 2017 introduced new limits on interest deductibility under Section 163(j), generally restricting deductions to 30 percent of a taxpayer's EBITDA (earnings before interest, tax, depreciation, and amortization). Since 2022, the general 30 percent business interest limitation has applied a less favorable rule that uses the taxpayer's EBIT (earnings before interest and tax) rather than EBITDA as the base for measuring the amount of deductible interest. The OBBBA reinstates (effective Jan. 1, 2025) and permanently extends the EBITDA definition of income for purposes of the Section 163(j) limit on business interest. This change will allow many taxpayers to own and operate commercial real estate under the general Section 163(j) business interest limitation, a requirement for 100 percent expensing of leasehold and interior improvements.

- **New Markets Tax Credit:** Permanently extends the new markets tax credit (NMTC), previously scheduled to expire on Dec. 31, 2025. Under the provision, taxpayers can receive a tax credit of 39% (claimed over 7 years) for investing in entities that provide capital for economic activities and project in low-income communities. The credit is competitive, awarded by the Treasury Department, and capped at $5 billion/year. According to the Treasury Department, since its inception, roughly 43% of NMTC investment has gone towards the development, rehabilitation and operation of productive real estate in low-income communities.

- **Estate and Gift Tax:** The OBBBA increases and permanently establishes higher federal estate and gift tax exclusion amounts. OBBA sets the exclusion amount at $15 million for an individual or $30 million for a married couple in 2026, adjusted for inflation thereafter. The exemption amount is $13.99 million (individual) in 2025 and was scheduled to fall to $7 million next year.

Harmful Proposals Excluded

- **Business SALT:** Preserves the full federal deductibility of business-related state and local property taxes.
- **SALT Workarounds & Cap for Individuals:** Eliminates proposed restrictions on SALT workaround regimes adopted by 30+ states that allow business owners to deduct state and local taxes on pass-through income. The legislation also increases the cap on the state and local income tax deduction for five years, 2025-2029. The cap increased to $40,000 in 2025 and is adjusted for inflation by 1 percent annually through 2029 ($40,400 in 2026). The temporary deduction increase phases down for taxpayers with adjusted gross incomes between $500,000 and $600,000, reverting back to $10,000 in 2030.
- **Carried Interest:** Contrary to repeated calls from President Trump to end the "carried interest loophole," the bill retains longstanding partnership tax laws that reward risk-taking and ensure capital gain treatment is not limited only to taxpayers with cash to invest.
- **Retaliatory Tax Measures:** Avoids a chilling impact on foreign investment in U.S. real estate by dropping retaliatory tax measures in proposed Section 899 included in the House bill and the initial Senate draft.
- **Excess Business Losses:** Eliminates a proposal included in both the House bill and the initial Senate draft that would have permanently compartmentalized active pass-through business losses and disallowed use of those losses against wages and investment income. The limitation on active pass-through business losses was initially enacted in TCJA. However, the current rule only results in a one-year deferral of losses because they are included in the taxpayer's net operating loss in future years (and therefore can be credited against wages/portfolio income). The legislation also permanently extends the one-year deferral rule while avoiding a permanent siloing of active pass-through losses.

New Measures & Changes Implemented

- **Factory Expensing:** Creates a temporary, four-year, 100 percent expensing benefit for the construction of new factories. The benefit would be available for nonresidential real property used in the manufacturing, production, or refining of tangible personal property. The provision is intended to apply to manufacturing, agricultural production, chemical production, and refining property. Construction must begin after Jan. 19, 2025, and before the end of calendar year 2028. Original use must commence with the taxpayer. The facilities must be owner-occupied and leased facilities would not appear to qualify for the benefit.
- **Taxable REIT Subsidiary Test:** Increases the flexibility of real estate businesses to grow, invest, and compete in evolving property markets by raising and restoring the percentage of assets of a REIT that may be held in taxable REIT subsidiaries from 20 percent to 25 percent (effective Jan. 1, 2026).
- **Condominium Construction Tax Accounting:** The legislation ends a discriminatory tax accounting rule that unfairly creates phantom income for condo developers with respect to the pre-sale of units. The current rule requiring condo developers to use the percentage of completion method of accounting raises hurdles for construction financing and discourages new housing construction. OBBBA allows developers to use the completed contract method of accounting for both regular and AMT tax purposes, which will align tax liability with actual receipts. The change is effective for contracts entered into after the date of enactment.

Energy

- **IRA Energy Tax Incentives:** Significantly scales back the IRA's clean energy tax incentives. A controversial excise tax from the Senate draft on projects that use foreign components was also dropped. OBBBA generally preserves eligibility for already planned or approved projects that begin construction before mid-2026.
  - *Section 48E investment tax credit:* Qualifying wind and solar projects must begin construction no later than 12 months after enactment or must be placed in service by the end of 2027.
  - *Section 179D deduction for energy-efficient commercial buildings:* Projects must begin construction by June 30, 2026.
  - *Section 45L credit for new energy-efficient homes:* Expires for homes acquired after June 30, 2026.