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The Real Estate Roundtable

October 17, 2025

The Honorable Kenneth J. Kies
Assistant Secretary of Treasury for Tax Policy
Chief Counsel (Acting), Internal Revenue Service
U.S. Department of Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

Dear Assistant Secretary Kies:

I write on behalf of the members of The Real Estate Roundtable to respectfully request that the Treasury Department and Internal Revenue Service issue implementing guidance necessary to ensure the bonus depreciation provision in the *One Big Beautiful Bill Act* (OBBBA) is successful in spurring productive real estate investment and broad-based economic growth. Specifically, we request that guidance confirm taxpayers' ability to modify a real property trade or business (RPTOB) election previously made under section 163(j)(7)(B). Such guidance would clarify property owners' eligibility for the expanded bonus depreciation benefit.

The restoration of 100 percent expensing for capital expenditures, including property improvements, is one of the most significant and meaningful provisions in OBBBA. The reforms aim to promote business investment while stimulating hiring, wage growth, and economic activity. The Tax Foundation estimates that the bonus depreciation benefit will boost long-run GDP by 0.6 percent and generate the equivalent of 145,000 jobs.¹ With appropriate and rational implementing rules, the bonus depreciation provision will facilitate the modernization and repurposing of real estate assets, including underutilized office buildings, shopping centers, hotels, and mixed-use properties. Small businesses will benefit from the ability to immediately expense their leasehold improvements. The capital expenditures spurred by expensing will create new spaces for commerce to flourish, boost property values, and strengthen communities by increasing local tax revenue critical for public services like schools and law enforcement.

The fully restored bonus depreciation benefit has the potential to put thousands of architects, engineers, contractors, and skilled tradesmen to work upgrading and improving aging buildings for the needs of the modern economy. By including tenant improvements and upgrades to the interior of nonresidential buildings ("qualified improvement property") in the 100 percent expensing provision, Congress effectively acknowledged that the otherwise applicable 15- or 20-year cost recovery periods do not align with the actual, useful economic lives of these property expenditures. Moreover, the economic distortions that resulted under prior law are even more damaging during periods of high inflation when long cost recovery periods reduce the net present value of future depreciation deductions.

¹ Tax Foundation, [One Big Beautiful Bill Act Tax Policies: Details and Analysis](#) (July 4, 2025).

Unfortunately, in the absence of additional tax guidance, many taxpayers will not qualify for bonus depreciation with respect to their property improvements. We believe this result is unintended. The *Tax Cuts and Jobs Act of 2017* (TCJA) imposed strict limits on the deductibility of business interest expense but provided an exception for an electing RPTOB. However, taxpayers that elect out of the section 163(j) business interest limitation are subject to the alternative depreciation system with respect to the exempted property. As a result, the property is ineligible for immediate expensing. In recent years, many taxpayers elected out of section 163(j) because of the combined impact of the business interest limitation and the gradual phasedown of 100 percent expensing, which reduced the economic value of the expensing benefit.

OBBBA fundamentally changes taxpayers' RPTOB calculation in two critical ways. First, it restores the expensing benefit from 40 percent (and declining) to 100 percent. Second, it increases the amount of deductible business interest in section 163(j) by changing how the limit is calculated. Deductible business interest under section 163(j) is limited to 30% of adjusted taxable income. Adjusted taxable income was defined as earnings before interest and tax expense, but after depreciation and amortization expense. As a result, depreciation expenses lowered the maximum amount of deductible business interest. OBBBA redefines adjusted taxable income as earnings before interest, tax, depreciation and amortization. The revised definition effectively increases the cap on deductible business interest for taxpayers with depreciable assets. This change is particularly helpful to real estate, where depreciation represents a major cost of doing business.

In short, under OBBBA, it is less likely today that a real estate owner will need to make a RPTOB election in order to deduct their business interest expense. Moreover, with the restoration of 100 percent expensing, the adverse consequences of a RPTOB election that disallows expensing are now more severe.

As a result, many real estate owners who elected out of section 163(j) under the prior regime would not have done so had those rules been in effect when the RPTOB elections were made. Without additional guidance, these taxpayers are locked into irreversible RPTOB elections that penalize them for rational, economic decisions made based on prior business interest and depreciation rules. An inability to amend or revoke prior RPTOB elections under section 163(j) will deter investment and capital expenditures in countless properties across the country, greatly undermining the benefits of the provision for the U.S. economy.

Fortunately, ample precedent and authority exists for Treasury and the IRS to clarify that, in light of the changes made in OBBBA, taxpayers can amend and change their prior RPTOB elections. The Coronavirus Aid, Relief, and Economic Stability Act of 2020 (CARES Act) temporarily modified section 163(j) and lessened the likelihood that a taxpayer's business interest deduction would be limited under the provision. The bill increased the cap on deductible business interest from 30 percent of adjusted taxable to 50 percent. It also made a technical correction to TCJA, clarifying that qualified improvement property was eligible for bonus depreciation. [Revenue Procedure 2020-22](#) granted an automatic extension of time for taxpayers to make or retroactively withdraw an RPTOB election. The Rev. Proc. allowed taxpayers to make a late election, or to withdraw a RPTOB election.

Letter to The Honorable Kenneth J. Kies

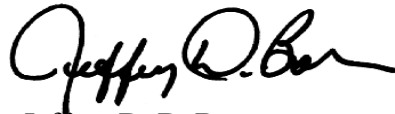
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Treasury and the IRS should act quickly to provide similar relief to taxpayers under OBBBA. Through no fault or action of their own, property owners are facing a similar change in circumstances that greatly affects factors informing a RPTOB election. We request that Treasury and the IRS issue guidance that allows taxpayers to withdraw a prior RPTOB election, on a going forward basis, consistent with the effective date of the changes to section 163(j) and section 168. Such guidance will ensure that taxpayers are not penalized for prior elections made under different, and no longer applicable, tax laws. Such guidance will also maximize the intended economic benefits of the bonus depreciation provision.

Thank you in advance for your consideration of this request. Please do not hesitate to contact me (jdeboer@rer.org) or Ryan McCormick, Real Estate Roundtable Senior Vice President and Counsel (rmccormick@rer.org) with any questions or requests for additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey D. DeBoer". The signature is fluid and cursive, with the first name "Jeffrey" being more prominent.

Jeffrey D. DeBoer
President & Chief Executive Officer