

Tax

Just four days into RER's fiscal year, President Trump signed into law the One Big Beautiful Bill Act (OB3 Act). This expansive legislation is having a positive impact on real estate jobs and investment, property values, and local communities. In the latter half of 2025 and first half of 2026, RER's tax-related advocacy has largely focused on the regulatory and administrative rulemaking necessary to effectively implement the new and far-reaching tax law. By engaging Treasury, the IRS, and other policymakers, RER is helping to shape how key tax provisions are interpreted and applied in practice.

Bonus Depreciation

The Tax Cuts and Jobs Act of 2017 (TCJA) capped taxpayers' ability to deduct their interest expense on business debt but created an exception that allows real estate businesses to fully deduct their interest if they make a "real property trade or business (RPTOB) election." The RPTOB election provides property owners with full deductibility of their business interest, but requires them to use the slower alternative depreciation system (ADS) for recovering the cost of their real estate investment. Moreover, property depreciated under the ADS is ineligible for bonus depreciation.

The OB3 Act restored 100 percent bonus depreciation, allowing businesses to immediately expense qualifying capital investments, including tenant and nonresidential property improvements. The OB3 Act also moderated the general restrictions on interest deductibility. However, the OB3 Act did not expressly clarify that existing property owners could revoke or reverse a prior RPTOB election—limiting their ability to fully benefit from the restored bonus depreciation provision.



Rep. Jason Smith (R-MO) (Chair, House Ways and Means Committee) was presented RER's Champion of the Economy Legislative Leadership Award for his efforts on the One Big Beautiful Bill Act (OB3).



RER's Actions:

Submitted a letter to Treasury in October 2025 requesting guidance allowing real estate businesses to amend or revoke prior RPTOB elections.

Emphasized that, without relief, property owners would be penalized for prior elections and unable to access the full benefit of immediate expensing.

Highlighted that clear implementing rules would help "facilitate the modernization and repurposing of real estate assets," including underutilized properties.

Remained in active dialogue with Treasury on the need for implementing guidance.



RER's Impact:

In March 2026, Treasury and the IRS issued guidance (IRS Revenue Procedure 2026-17) allowing taxpayers to withdraw prior RPTOB elections and access 100 percent bonus depreciation.

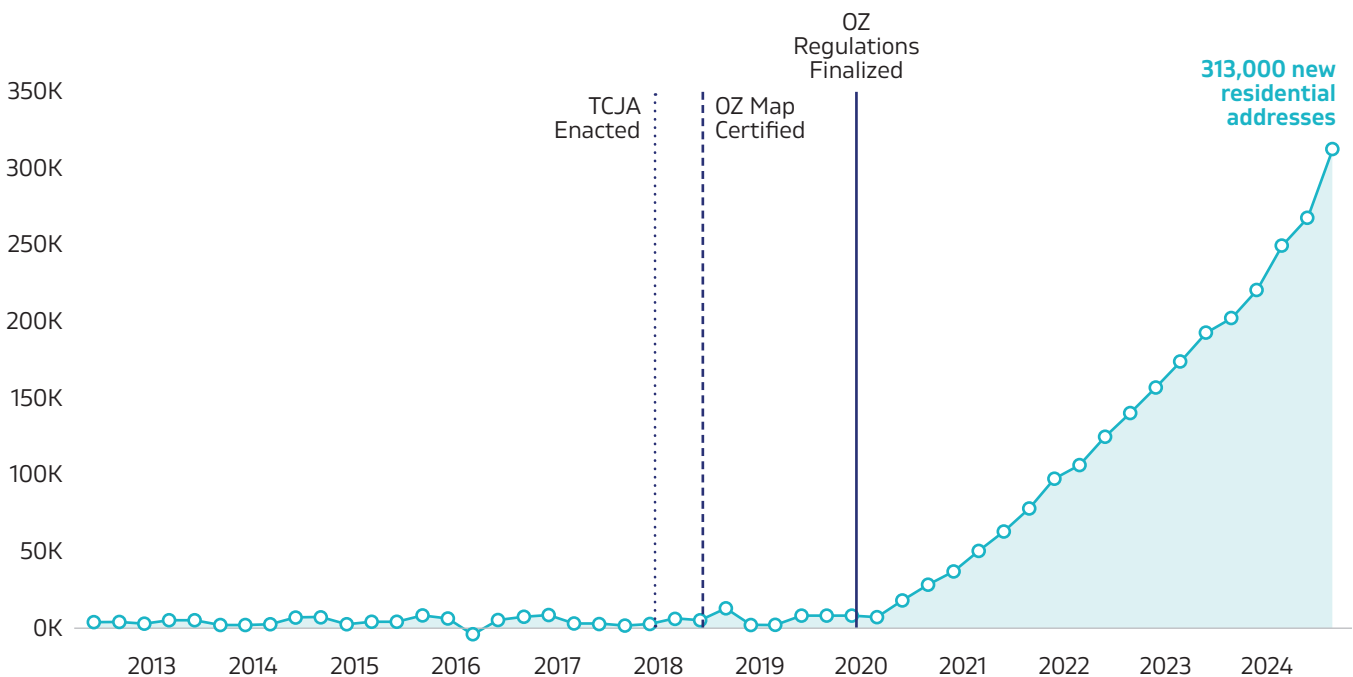
This relief extends immediate expensing to a broader share of commercial real estate, creates a more level playing field for existing property owners, and helps ensure the provision operates as intended under the OB3 Act.

Opportunity Zones

Opportunity Zones (OZs) are a key tool for directing private capital into low-income communities, stimulating job creation, economic opportunity, and improvements to the built environment. The OB3 Act permanently extended OZ tax incentives and made a number of helpful reforms that will further increase the provisions' positive impact.

Still, the transition from the original OZs program (OZs 1.0) to the OB3 Act framework (OZs 2.0) raises immediate questions—particularly around how to maintain investment flows during the shift from existing designations to new ones. The uncertainty has had a chilling effect on OZ investment in 2026, with investors delaying or redirecting capital deployment.

Opportunity Zones' effect on the count of residential addresses, aggregate effect⁹ All tracts



Source: Economic Innovation Group



RER's Actions:

Actively engaged Treasury and IRS to support a smooth transition from OZs 1.0 to 2.0, through multiple meetings with policymakers.

Submitted a detailed comment letter in December 2025 requesting urgent transition guidance and confirmation that investments in existing OZ funds and projects would continue to qualify for tax benefits after the current OZ census tract designations have expired.

Provided draft guidance in March 2026, offering specific language that Treasury and the IRS could use to establish a safe harbor for qualifying investments.



RER's Impact:

On June 18, 2026, Treasury and the IRS issued a Notice (IRS Notice 2026-40) specifically focusing on the transitional issues affecting OZ investments under the OZ 1.0 regime.

The guidance incorporates many of the concepts recommended by RER. The Notice allows for investments in OZ 1.0 census tracts after their statutory expiration if certain requirements are met. For example, the business must have a working capital safe harbor plan, which was a core feature of the Roundtable's recommendations.

The IRS Notice is a welcome and positive step forward that provides critical certainty for real estate investors deploying capital and creating jobs and productive assets in low-income communities.

The Notice indicates that formal proposed regulations will be forthcoming, and RER will continue to advocate for clear, workable implementation of the new OZ framework to keep housing and economic development projects on track in underserved communities.

Protecting and Preserving U.S. Real Estate's Access to Foreign Capital

Foreign investors are a critical source of financing for capital-intensive U.S. real estate projects. However, recent federal regulations and legislative proposals have threatened to impose new tax restrictions on foreign investment in U.S. commercial real estate.

Over the past year, RER successfully advocated for Treasury to withdraw a 2024 regulation that expanded the reach of the Foreign Investment in Real Property Tax Act (FIRPTA); helped persuade Treasury to pull back a proposed regulation under Section 892 that would have imposed new tax burdens on sovereign wealth funds, pension funds, and other foreign governmental investors in U.S. real estate; and discouraged lawmakers from imposing new retaliatory tax measures against foreign investors under proposed Section 899.

FIRPTA "Look-Through Rule"

In 2024, Treasury finalized a new "look-through rule" that expanded the reach of FIRPTA for domestically controlled REITs. The change in effect raised the tax burden on inbound real estate capital by subjecting a significant share of previously tax-exempt foreign investment to U.S. capital gains tax. The rule would have applied retroactively, including to long-established structures created under the prior legal regime.



Phillip Swagel (Director, Congressional Budget Office) discusses the economic outlook, fiscal pressures, and barriers to housing and infrastructure investment with RER members.



RER's Actions:

In March 2025, RER submitted a detailed letter—its fourth letter to policymakers on the matter—urging Treasury to withdraw the regulation.

The March 2025 letter argued that the rule reversed decades of well-settled tax law, misconstrued the statute, and contradicted congressional intent.

RER also expressed concerns around the rule's potential to impede investment in the U.S. economy and job-creating U.S. real estate and infrastructure projects.



RER's Impact:

In October 2025, Treasury proposed (REG-109742-25) the full repeal of the 2024 FIRPTA “look-through rule” for domestically controlled REITs—a major shift that reflects years of engagement from RER and Tax Policy Advisory Committee (TPAC) members.

The preamble to the proposed regulations conveyed the administration’s strong agreement with the policy and economic arguments in RER’s March 2025 letter.

RER wrote to Treasury in December 2025 commending the administration for the rule change and urging finalization of the updated regulations.

Section 892 (Sovereign Investors)

Section 892 of the tax code generally exempts investment income earned by foreign governments, including sovereign wealth funds, from U.S. income tax. The Section 892 exemption does not apply, however, if the foreign government effectively controls the U.S. business or is deemed to be engaged in a commercial activity.

In December 2025, Treasury released final Section 892 regulations and issued new proposed regulations addressing two key questions: 1) when a foreign government has effective control of an entity engaged in commercial activities, and 2) when an acquisition of debt is considered commercial activity. Aspects of these regulations could disrupt inbound real estate investment and raise the cost of capital for U.S. real estate projects.



Sen. Lisa Blunt Rochester (D-DE) (Committees: Banking, Housing, and Urban Affairs; Commerce, Science, and Transportation; Environment and Public Works; and Health, Education, Labor, and Pensions) joined TPAC members to discuss her bill, the RER-supported Rental Housing Investment Act.



RER's Actions:

Submitted a detailed comment letter in February 2026 urging Treasury to revise the proposed regulations to prevent disruptions to sovereign investment in U.S. real estate.

Recommended targeted fixes, including clear grandfathering rules; clarifying that customary minority protections do not create effective control; confirming that withholding agents may rely on foreign government self-certifications; and adding safe harbors (for certain distressed-debt modifications).

Reinforced this position by amplifying Tax Policy Advisory Committee (TPAC) Chair Joshua Parker’s March 2026 Bloomberg op-ed, which encouraged Treasury to modernize the rules without discouraging long-term foreign capital flows.



RER's Impact:

In late February 2026, Treasury officials publicly indicated that the department is revising the proposed Section 892 regulations, citing feedback from the investment and real estate industry, including RER.

Treasury tax policy officials also signaled that the proposed regulations—if finalized—will not be applied retroactively to existing transactions and structures.

In May 2026, consistent with RER's request, Treasury partially withdrew and modified its proposed regulations, amending the effective dates and clarifying that the final regulations will include generous grandfathering and transition rules to avoid adversely affecting current investments.

These changes were made even while the agency continues its consideration of the underlying substantive questions.

RER will continue engaging Treasury to ensure that the final Section 892 regulations support sovereign investment in U.S. real estate.

RER also continued to push back on broader retaliatory tax measures, including the proposed Section 899 “revenge tax”, which would have raised U.S. taxes on inbound investment from countries with “unfair” tax regimes. The likelihood of Section 899 resurfacing has declined following Treasury and the Organisation for Economic Co-operation and Development (OECD) reaching an agreement to exempt U.S. businesses from the global minimum tax in January 2026.

Real Estate's Contribution To The Tax Base⁶

\$630B

Yearly property taxes paid to local governments

Commercial real estate owners pay property tax rates that are 1.7X more, on average, than the tax rates paid by homeowners.⁷

SECA Limited Partner Exception

Nearly half of the 441,000 limited partnerships in the U.S. are real estate partnerships. In 1977, Congress expressly exempted limited partners from self-employment taxes imposed by the Self-Employment Contributions Act (SECA). In recent years, the IRS has sought to redefine what it means to be a limited partner by challenging taxpayers and litigating the issue in several cases before the Tax Court.

If implemented, the IRS's narrower interpretation would increase taxes on active limited partners, disrupt long-standing partnership structures, and undermine the flexibility of limited partnerships and other pass-through entities that drive capital formation across the real estate industry. A major reform in the taxation of limited partners is a policy matter that should require an act of Congress.

Estimated Employment, Income, and Output Effects of Real Estate Industry Partnerships and LLCs in the U.S.¹⁰

9,044,356

 Workers Employed

\$896.8B

 Value Added

\$518.5B

 Labor Income

\$1,272.2B

 Output

Source: CRE By The Numbers



RER's Actions:

Filed amicus briefs in *Denham Capital Management LP v. Commissioner* (First Circuit Court of Appeals, August 2025) and in *Soroban Capital Partners LP v. Commissioner* (Second Circuit Court of Appeals, December 2025), defending the statutory limited partner exception.

Filed an amicus brief in *Sirius Solutions, L.L.P. v. Commissioner* (Fifth Circuit Court of Appeals, August 2024), arguing that the IRS's "passive investor" test lacks statutory foundation and contradicts decades of state law.

Emphasized that both pre-1977 case law and the IRS's own prior guidance—including its 1994 proposed regulations—support a state law-based definition of limited partners.



RER's Impact:

In January 2026, the Fifth Circuit issued a ruling in *Sirius Solutions v. Commissioner* that aligned closely with RER's position.

The court rejected the Tax Court's test involving a functional analysis of whether a partner is passive or active and applied a state law-based approach that generally focuses on the partner's limited legal liability under governing state law.

The ruling restricts the IRS's effort to extend self-employment taxes to a broad range of limited partners in limited partnerships.

The Fifth Circuit decision is a positive outcome, but additional rulings from the First and Second Circuits are expected in the months ahead.

Looking Ahead

In addition to the issues outlined above, RER is actively engaging with lawmakers regarding the potential for another tax bill in the second half of 2026 or in 2027. RER is currently advocating for a number of tax changes, including: a tax credit for commercial-to-residential property conversions (the bipartisan *Revitalizing Downtowns and Main Streets Act*, H.R. 2410), reforming the tax treatment of demolition costs and demolished buildings, and an extension of the 2025 factory expensing benefit to leased facilities. RER remains vigilant regarding potential tax proposals that could adversely affect capital formation—such as changes to treatment of capital gains, partnerships, or carried interest—particularly if control of the House or Senate shifts after the 2026 midterm elections.

Overall, RER is committed to advocating for tax policies that promote a stable, predictable framework for investment in U.S. real estate and the broader economy.