



The Real Estate Roundtable

Legislative Outlook or Real Estate
NYU Federal Real Estate and Partnerships
Tax Conference

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The Real Estate Roundtable
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www.rer.org

The Real Estate Roundtable

- Brings together leaders of the nation’s top publicly-held and privately-owned real estate ownership, development, lending and management firms with the leaders of major [national real estate trade associations](#) to jointly address key national policy issues relating to real estate and the overall economy.
- Seeks to ensure a cohesive industry voice is heard by government officials and the public about real estate and its important role in the global economy.
- Roundtable members’ portfolios contain over 12 billion square feet of office, retail and industrial properties valued at more than \$4 trillion; over 4 million apartment units; and in excess of 5 million hotel rooms.

Real Estate Trade Organizations

10%

- | | |
|---|---|
| American Hotel & Lodging Association (AHLA) | NAIOP, the Commercial Real Estate Development Association (NAIOP) |
| American Resort Development Association (ARDA) | National Apartment Association (NAA) |
| Association of Foreign Investors in Real Estate (AFIRE) | National Association of Home Builders (NAHB) |
| Building Owners and Managers Association Int'l. (BOMA) | National Association of Real Estate Investment Managers (NAREIM) |
| CCIM Institute (CCIM) | Nareit (NAREIT) |
| CRE Finance Council (CREFC) | National Association of Realtors® (NAR) |
| CREW Network (CREW) | National Multifamily Housing Council (NMHC) |
| International Council of Shopping Centers (ICSC) | Pension Real Estate Association (PREA) |
| Mortgage Bankers Association (MBA) | Real Estate Executive Council (REEC) |
| | Urban Land Institute (ULI) |



Asset Managers

3%

Financial Services

20%

- 58% Banks (Commercial & Investment)
- 26% Insurers
- 16% Mortgage Bankers

Owners

67%

- | | |
|-------------|---------------|
| 55% Private | 12% Hotel |
| 44% Public | 11% Housing |
| 46% Mixed | 4% Industrial |
| 14% Office | 2% Other |
| 12% Retail | |

Congress and the Road Ahead

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- **Short-term:** what to expect between now and the end of the year
- **Medium-term:** divided government increasingly likely—what does it mean for real estate?
- **Long-term:** fiscal challenges will weigh heavily on real estate/pass-through tax policy

Short-Term Legislative Outlook for 2026 4

- 36 legislative workdays remaining in House until November 3rd election (48 in the Senate)
- Pre-election legislative agenda:
 - Bipartisan housing legislation
 - War Powers Act resolution votes (six so far)
 - Reconciliation 2.0 (funding for ICE and CBP)
 - Reconciliation 3.0 (Repub. tax/spending priorities)
 - Federal appropriations deadline (9/30)
 - Expiring farm bill (9/30); expiring highway bill (9/30)
- “Lame duck” session: Nov. 9 – Dec. 18

Short-Term Legislative Outlook for 2026 5

21st Century ROAD to Housing Act - bipartisan legislation to expand housing supply by reducing regulatory barriers and modernizing federal housing programs

Highlights ([H.R. 6644](#)):

- Environmental review exclusions; updated standards for manufactured housing; new loan limits for multifamily mortgages; numerous grant and pilot programs, guidelines/best practices for state and local zoning and land-use policies, community banking reform
- Restrictions on large, institutional ownership of single-family rental homes (350+ homes)
 - Exemptions for existing SFR holdings, build-to-rent, renovate-to rent, foreclosures, homes in “rent to own” programs, senior housing, and institutional-to-institutional sales
 - Senate version includes [unconstitutional](#) forced-sale requirement for build-to-rent homes after 7 years
- House and Senate conferencing informally

Short-Term Legislative Outlook for 2026 6

- **Reconciliation 3.0 – a potential vehicle for Republican economic policy priorities**
 - Ongoing, closed-door House Leadership/Committee discussions on items to include
 - \$350 billion for war funding
 - Bill proponents: House Speaker Mike Johnson (R-LA), House Budget Chair Jodey Arrington (R-TX), Senate Budget Chair Lindsey Graham (R-SC)
 - Bill skeptics: House W&M Chair Jason Smith (R-MO), Senate Majority Leader John Thune (R-SD)
 - Challenges: narrow margins, White House ambivalence, lack of galvanizing issue/proposal
 - Verdict ... low probability

Short-Term Legislative Outlook for 2026 7

- **Looking beyond the election—why “lame duck” sessions matter**
 - Typically account for 20-30% of substantive lawmaking ([Pew Research](#))
 - Consequential bills enacted in lame duck sessions:
 - GATT/WTO (1994)
 - fiscal cliff extension and payroll tax cut (2010)
 - 2001-03 tax cut permanency (2012)
 - tax extenders (2014)
 - COVID relief/stimulus checks (2020)
- **Key drivers:** (a) outgoing Majority’s “last gasp”; (b) incoming Majority “clearing the deck”; (c) frustration with pre-election gridlock; (d) ousted/retiring Members not concerned with political fallout
- **Verdict:** higher probability for a tax bill in the lame duck than before election, but still a long shot

Medium-Term Legislative Outlook: 2027-28

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- Divided government likely, but not a certainty
- Potential scenarios next year:
 - Partisan gridlock with tax bills used primarily for messaging
 - Alternatively, divided government spurs bipartisan tax cooperation (3-corner agreements between House Majority, Senate Majority, Senate Minority)
- Bipartisan cooperation more likely on smaller, narrower issues (e.g., Opportunity Zones, housing incentives) than larger issues (tax rates, capital gains, 199A, etc.)

Medium-Term Legislative Outlook: 2027-28

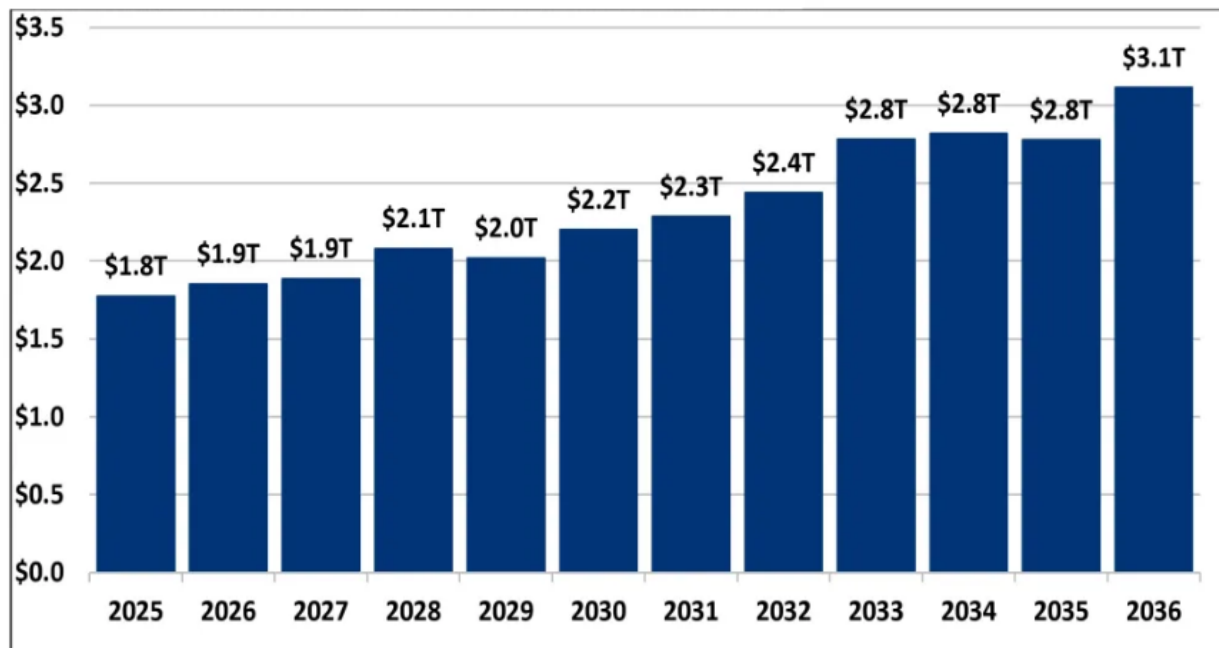
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- Popular expiring tax provisions (tips, overtime pay, senior deduction, car loan interest deduction, factory expensing, SALT cap increase, Trump accounts) will create pressure for a major tax bill as the end of President Trump's term approaches
- Although Democrats did not vote for OBBBA, they will be inclined to support extending many of the bill's popular, temporary provisions

Long-Term Challenges: 2029 and Beyond

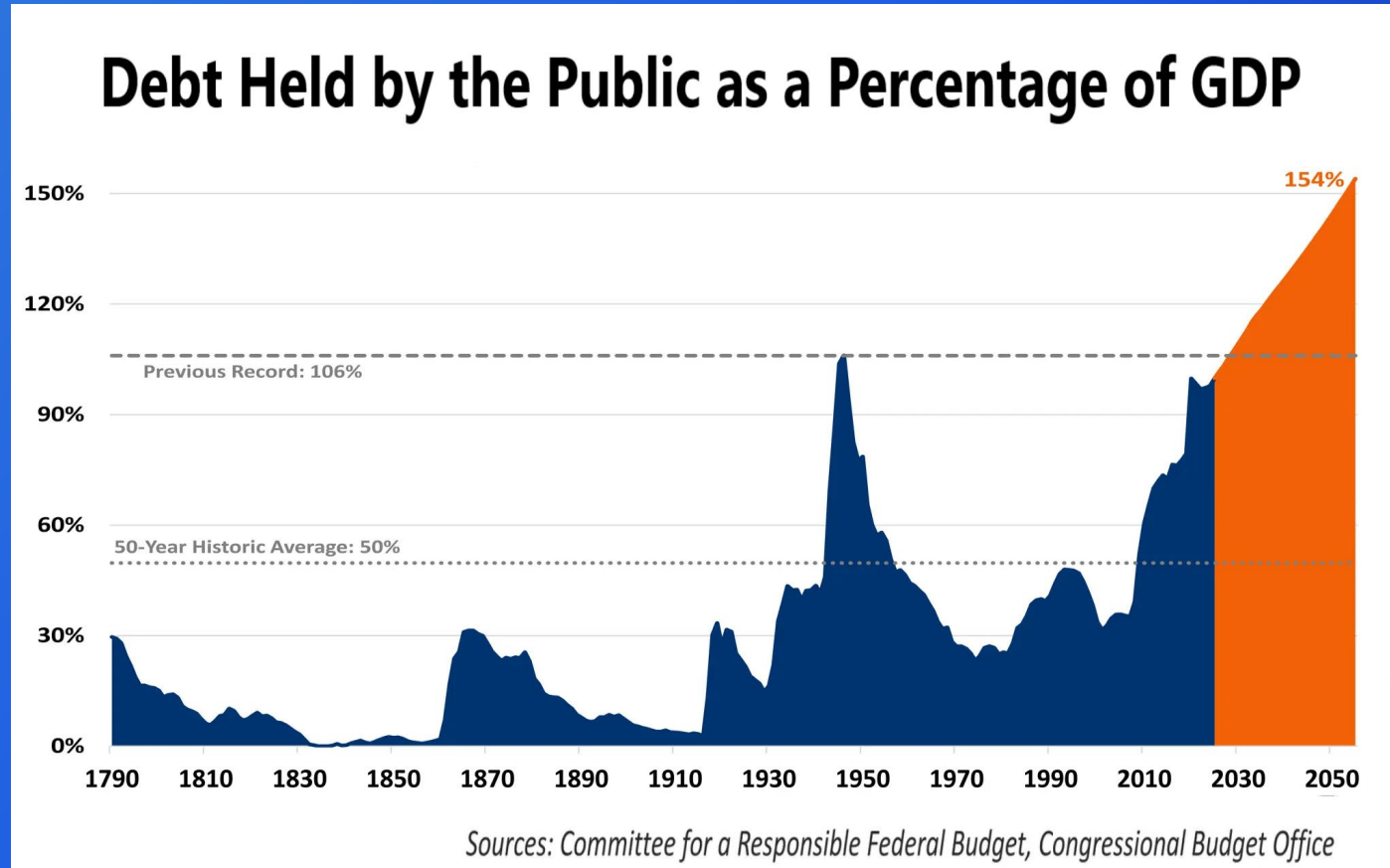
\$2 trillion deficits are the new normal

Projected Annual Budget Deficit



Source: Congressional Budget Office.

Long-Term Challenges: 2029 and Beyond



Long-term fiscal imbalances, revenue pressures, and Presidential election politics could put spotlight back on real estate tax policies

Real Estate Tax Legislative Update

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Main takeaways:

- The tax provisions in the One Big Beautiful Bill Act were overwhelmingly positive for US real estate: 199A, OZs, LIHTC, bonus depreciation, condo construction tax accounting, 163(j).
- The final bill avoided potential harms: business SALT, carried interest, 899, 461(l), 1031, SALT pass-through workaround regimes
- Real estate industry focus since July 2025 has been on OBBBA implementation—bonus depreciation, OZs, clean energy tax incentive rollback—and other tax regulatory activity (FIRPTA, 892)

Real Estate Tax Legislative Update

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Main takeaways:

- **Legislative opportunities going forward:** rental housing supply incentives; commercial-to-residential conversions; demolition costs; factory expensing; OZ enhancements; principal residence exclusion
- **Legislative risks going forward:** capital gains rate; NIIT; active losses; tax penalties on large institutional owners of SFR; carried interest; 199A cap; unrealized gains; 1031, step-up in basis at death

New “Buy, Borrow, Die” Tax Legislation

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ROBINHOOD Act (Sen. Ruben Gallego, D-AZ, [S. 4662](#))

- Treats loans as realization events for high net-worth individuals (income > \$100M *or* assets > \$1B)
- Applicable taxpayer must recognize gain on his/her long-term capital assets equal to any loan or long-term lease proceeds (irrespective of any relationship between the loan and the appreciated asset)
- Loans prior to enactment are aggregated and treated as issued on 1/1/27
- Loans to partnerships and other pass-through entities allocated pro-rata to the entity’s owners
- No offsetting deduction for the lender

Bonus Depreciation and Interest Deductibility

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- OBBBA reinstated favorable EBITDA definition of adjusted taxable income used to measure limit on deductible business interest
- Under TCJA, there is no limitation on business interest for an electing real property trade or business under §163(j)(7)(A)(ii). But taxpayers that use RPTOB election are subject to ADS cost recovery and ineligible for bonus depreciation
- The OBBBA change is helpful to real estate businesses that want to avail themselves of bonus depreciation for nonresidential property improvements
- RER requested and Treasury recently issued [Rev. Proc. 2026-17](#) allowing taxpayers to revoke a prior RPTOB election. This opens the door for immediate expensing of future improvements on real estate acquired pre-OBBBA.

Opportunity Zones

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OBBBA permanently extended OZ program with new census tract designations every 10 years and a 5-year rolling deferral period for new investments.

- OZ 1.0 census tracts remain in effect through 2028
- OZ 2.0 census tract designation process underway
- Dead Zone problem – investors delaying investment until 2027 when OZs 2.0 take effect
- Tax clarity needed for projects that begin but are not yet completed when the OZ 1.0 census tracts expire.
- RER has encouraged Treasury to issue a Rev. Proc. with a safe harbor for OZ 1.0 investments centered on a QOF's working capital safe harbor plan)

Opportunity Zones

- OBBBA tightens definition of a low-income census tract (income test lowered from 80% to 70% of area-wide median income; excludes contiguous tracts)

Total OZ 1.0 designated census tracts	8,764
Total OZ 2.0 eligible census tracts	25,332
Maximum OZ 2.0 census tract designations	6,544

Source: [Congressional Research Service](#) (May 2026)

- Contiguous census tracts no longer eligible; special benefits/rules for rural OZs

Opportunity Zones

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Potential OZ enhancements

- Deferral of 2026 gains if rolled into a new OZ investment
- Removal limitations on the type of capital eligible for investment in Opportunity Funds
- Additional OZ tax benefit for the conversion of older, obsolete commercial buildings to housing
- Codifying, lengthening, and improving the OZ working capital safe harbor
- Modifying the substantial improvement threshold to cover a broad range of real estate rehabilitation and development projects.
- Address disparate treatment of OZ income under the CAM-T

Property Redevelopment Costs

Property owners incur a tax penalty when demolishing and replacing an existing building. Any remaining tax basis is recapitalized into the nondepreciable land (sec. 280B).

In order to support residential, mixed-use, and redevelopment projects that expand housing supply and economic activity, Congress should modify the tax treatment of demolished buildings and demolition costs.

- Any remaining tax basis in a demolished building should be immediately deductible as a loss.
- Demolition costs relate to an asset that no longer exists and should be immediately deductible.
- Pair the reforms with reasonable guardrails—such as requiring timely redevelopment or placement-in-service of a replacement structure—to ensure the policy supports productive investment and avoids purely tax-motivated demolition activity.

Foreign Investment and US Real Estate

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Foreign investors are a critical source of capital and financing for US commercial real estate:

- Between 2020 – 2024, foreign sources invested over \$180B in US real estate, including \$50B in multifamily housing. Since 2011, foreign governments have invested over \$100B in US real estate

Key tax developments:

- Treasury's proposed withdrawal of 2024 FIRPTA DC REIT look-through rule
- Foreign gov't tax exemption (sec. 892) and proposed regulations regarding controlled commercial entities and effective control, including recently announced transition rules
- Inclusion and removal of retaliatory tax measures (sec. 899) from 2025 tax bill

Housing Supply Incentives: LIHTC

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- 15 years of underproduction has resulted in severe shortage of housing supply and a crisis of housing affordability.
- OBBBA increases LIHTC credit allocations 12% and reforms PAB financing requirement
- Bipartisan, bicameral *Affordable Housing Credit Improvement Act* would expand and improve the low-income housing tax credit ([S. 1557](#), [H.R. 3238](#)):
 - Increase annual credit allocations by 50% over 2025 level
 - Basis boosts for rural, extremely low-income, and bond-financed developments
 - Create flexible income test for existing tenants
- At time of introduction, estimated to create 1.9 million additional affordable rental homes over 10 years

Housing Supply Incentives: Property Conversions Tax Credit

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Revitalizing Downtowns and Main Streets Act ([H.R. 9002](#))

- Sponsors: Rep. Mike Carey (R-OH) and Rep. Jimmy Gomez (D-CA)
- Modeled on historic rehabilitation tax credit
- Compliments regulatory/zoning/land use changes and property tax abatement efforts at state and local level
- 20% credit for qualifying conversion expenditures; 30% credit for properties in low-income census tracts
- 30-year affordable housing requirement
 - o 20% of residential units reserved for individuals with incomes of 80% or less of area median income

Housing Supply Incentives: Rental Housing Investment Act

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Bicameral legislation, bipartisan in the House ([H.R. 8996](#), [S. 4080](#))

- Elective expensing allowance of \$150K per-unit for residential rental property placed in service 12 months after date of enactment
- Property must consist of at least 2 dwelling units
- 10-year recapture provision if change in use
- Expensing allowed increased to \$250K for affordable (income-restricted) units

Factory Expensing

Factory Expensing – to achieve the objective of supporting domestic manufacturing, leased facilities should qualify

- OBBBA creates a temporary, 4-year 100% expensing benefit for the construction of new factories
- Eligible facilities must be owner-occupied (qualified production property must be “used by the taxpayer as an integral part of a qualified production activity”).
- Small and mid-sized manufacturing facilities are often leased; RER working with lawmakers to extend the factory expensing benefit to leased facilities.

Clean Energy Tax Incentives

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- OBBBA reforms, rolls back, and sunsets key energy tax incentives
- Transition guidance for rooftop solar investments
 - If sec. 48E solar/wind project begins construction by 7/4/26, then must be placed in service within 4 yrs. Alternatively, solar/wind project must be placed in service by 12/31/27
 - IRS provided guidance on “beginning of construction” differentiates based on size of project ([Notice 2025-42](#))
 - Generally must demonstrate physical work of a significant nature
But preexisting 5% safe harbor (financial contribution) preserved for projects under 1.5MW of energy
- American Energy Dominance Act ([H.R. 8477](#)) would restore original expiration dates for IRA clean energy incentives
 - 6 House Republican cosponsors

Capital Gains – Principal Residence

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More Homes on the Market Act ([H.R. 1340](#))

- Capital gains exclusion on a principal residence unchanged since its enactment in 1997. Inflation has reduced the economic value of the exclusion by more than 50%.
- Bipartisan, bicameral legislation would double the capital gains exclusion on the sale of a principal residence
- Legislation increases the exclusion from \$250,000 to \$500,000 for singles and \$500,000 to \$1 million for married couples. The exclusion would adjust for inflation in future years.
- Over 120 cosponsors in the House.

Partnership Tax Reform

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Preventing Abusive Routine Tax Nonsense Enabled by Rip-offs, Shelters, and Havens and Instead Promoting Simplicity Act (***PARTNERSHIPS***) Act ([S. 2095](#))

- Sponsor: Senate Finance Ranking Democrat Ron Wyden (D-OR)
- 2025 updated version of 2021 discussion draft
- Anticipated to raise over \$1 trillion / 10 years
- Stated objectives:
 - Eliminate optionality; remove ambiguity; facilitate auditing and enforcement; align language and policy of existing provisions; don't allow taxpayers to pick and choose when they pay tax; raise revenue.

Partnership Tax Reform

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PARTNERSHIPS Act ([S. 2095](#)), Key Provisions:

- Directs Treasury to issue regulations applying economic substance approach when analyzing partnership transactions
- Require partnership liabilities (including recourse debt) to be allocated based on the partners' shares of partnership profits
- Require revaluations of partnership assets upon certain changes in the partners' economic arrangement
- Extends net investment income tax to all trade or business income not currently covered by FICA, SECA, or NIIT

Partnership Tax Reform

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PARTNERSHIPS Act (S. 2095) Key Provisions, continued:

- Retains “substantial economic effect” test for allocations of income, gain, loss, deduction, or credit, but requires use of “consistent percentage method” for allocations if partners are members of a controlled group
- With respect to a partnership’s sale of property that had built-in gain or loss when contributed, requires use of the remedial allocation method under §704(c) to determine contributing partner’s gain or loss.
- Eliminate the 7-year rule for so-called mixing bowl transactions

Limited Partners and SECA Liability

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- Since 1977, limited partners are exempt from SECA under Section 1402(a)(13)
- Treasury/IRS seeking to narrow the exception by challenging limited partners that don't meet a new, "passive investor" functional test affirmed by Tax Court in *Soroban Capital Partners* (Nov. 2023)
- Taxpayer appeals in various stages of litigation
 - Denham, 1st Circuit
 - Soroban, 2nd Circuit
 - Sirius, 5th Circuit (panel reversed Tax Court decision in favor of government)

Limited Partners and SECA Liability

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➤ Why It Matters:

- Current cases involve hedge fund management companies, but outcome broadly relevant to limited partnerships / fund structures
- 2.2 million real estate partnerships with 9.6 million partners
- 217,000 real estate **limited** partnerships in the US with 1.7 million partners
- SECA imposes 3.8% tax on self-employment income above \$250K
- Changing the longstanding tax treatment of partners and partnerships is the domain of Congress, not Treasury, the IRS, or the Courts

Limited Partners and SECA Liability

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- **Roundtable Amicus Briefs** (Sirius, 2024; Denham 2025):
 - Limited partner undefined in tax code; courts must look to state law to construe the meaning
 - State law has never imposed a “passive investor” restriction – LPs historically permitted to engage in broad range of business activities for the partnership
 - 1994 proposed Treasury regulations recognized state law as providing the applicable standards for determining LP status



The Real Estate Roundtable

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