



The Real Estate Roundtable

Pass-Through Business Income

Tax Policy

Summary

Real estate generally is owned and operated through “pass-through” entities that allow income to pass through to individual owners rather than taxing the income at the entity level. Pass-through entities such as partnerships, limited liability companies (LLCs), S corporations, and REITs are ideal for real estate because they give investors flexibility in how they structure the risks and rewards of these capital-intensive and relatively illiquid businesses.

Congress enacted a 20 percent deduction for pass-through business income in the Tax Cuts and Jobs Act of 2017 (Section 199A). Congress permanently extended the pass-through deduction in the One Big Beautiful Bill Act (OB3 Act), signed into law on July 4, 2025. More recently, a handful of Democratic members of the House of Representatives have introduced legislation to repeal the pass-through deduction for taxpayers with incomes over \$1 million.

Key Takeaways

- Our pass-through regime is a competitive strength of the U.S. tax system. Most countries rely on inflexible corporate regimes that provide little ability for an entrepreneur to tailor the capital and ownership structure to meet the needs of the business and its investors.
 - Half of the 4 million partnerships in the U.S. are real estate partnerships, and real estate activity constitutes a large share of pass-through business activity.
 - Publicly traded REITs allow small investors to invest in diversified, commercial real estate using the same single tax system available to partners and partnerships.
 - Small and closely-held businesses drive job growth and entrepreneurial activity in the United States. Entity choice is a differentiator that contributes to our entrepreneurial culture.
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Background

Pass-Through Business Income Deduction

- In 2017, Congress reduced the corporate tax rate by **40 percent** and created a temporary **20 percent** deduction (Section 199A) for pass-through business income to avoid putting partnerships, S corporations, and REITs at a competitive disadvantage relative to large C corporations.
- The pass-through deduction applies to pass-through income to the extent the business pays wages to employees and/or owns tangible, depreciable property (such as real estate). Specified services business (e.g., law firms, accounting firms, etc.) are not eligible for the deduction.
- Section 199A lowers the top marginal income tax rate on qualifying pass-through business income from 39.6 percent to 29.6 percent.
- Section 199A was scheduled to expire at the end of 2025. OB3 Act permanently extended the pass-through deduction.
- Tax legislation considered in 2021 would have raised the top marginal income tax rate on many small and pass-through business owners from 29.6 percent to 46.4 percent.
- Legislation introduced after enactment of OB3 Act by a handful of House Democratic members ([Equal Tax Act, H.R. 5336](#)) would repeal Section 199A for business owners with annual incomes over \$1 million.

Recommendations

Preserve Section 199A: Congress should continue to support **closely-held, entrepreneurial businesses** that create jobs and spur growth, and reject tax changes that discriminate against pass-through entities.

- Any new tax legislation should avoid the unintended consequences and potential harm caused by the stacking of tax increases on pass-through entities.



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- Section 199A is appropriately targeted at businesses that hire workers and invest in capital equipment and property, and it should be retained.
- Section 199A helps preserve tax fairness vis-à-vis large corporations, promoting competition and entity choice.