Gallagher Tax & Investment LLC

2025/2026 Tax Planning Guide

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Welcome to the 2025/2026 Tax Planning Guide for Real Estate Professionals

The real estate industry faces an increasingly complex tax environment, shaped by recent legislative changes and compliance requirements. As we approach the close of 2025, real estate owners and investors face a pivotal moment in tax planning. This year introduced sweeping reforms through the One Big Beautiful Bill Act (OBBBA), signed into law on July 4, 2025. These changes significantly impact real estate taxation, creating both opportunities and challenges for those seeking to optimize portfolios and minimize tax liabilities. Whether you manage or develop industrial, residential, or commercial properties, or invest through partnerships, understanding these changes is essential. This guide highlights the most impactful updates for real estate owners and developers, including strategies for depreciation, interest expense limitations, charitable giving, estate planning, and more. By staying informed and implementing proactive strategies, businesses can reduce risk, maximize deductions, and plan for success in the year ahead.

Key OBBBA Updates

- **Restoration of 100% Bonus Depreciation:** Investors can now fully deduct qualifying property improvements and renovations placed in service after January 19, 2025. This change is permanent and can significantly accelerate tax savings.
- **Favorable Interest Expense Deductions:** This will allow more interest to be deducted for leveraged projects. This is a welcome change given the continued pressure on real estate businesses with the current interest rate environment.
- **Opportunity Zone Enhancements:** The sunset date for Opportunity Zones has been eliminated, and new criteria have been introduced, expanding the potential for tax-advantaged investments.
- **Excess Business Loss Limitation Made Permanent:** The OBBBA permanently codifies the limitation on excess business losses for high-income noncorporate taxpayers. Business losses exceeding the thresholds cannot offset non-business income (e.g., wages, interest, dividends, capital gains) and must be carried forward as Net Operating Losses.
- **Expanded and Modified Charitable Deduction Rules:** Starting in 2026, the OBBBA has new limits for high-income earners. These changes may incentivize front-loading donations in 2025 to maximize current deduction benefits.

This guide aims to help real estate owners and investors understand how the changes under the OBBBA might affect them and provide some guidance on how to plan accordingly. It will also cover several other key areas real estate owners and real estate investors should address as they finalize their tax strategies.

The close of 2025 presents opportunities for real estate owners and investors navigating a rapidly evolving tax landscape. The enactment of the OBBBA introduces significant changes that require careful planning and timely action to maximize benefits and minimize risks. By understanding these updates and implementing proactive strategies – whether through bonus depreciation, interest expense optimization, or charitable giving – taxpayers can position their businesses for success in the coming year.

If you would like to discuss any of the techniques or planning ideas presented in this guide, please contact us Gallagher Tax & Investment LLC at your earliest convenience.

As always, consulting with your tax advisor to tailor these strategies to your specific circumstances is recommended. Staying informed and acting early is the key to turning complexity into opportunity.

Have a prosperous new year ahead!

Sincerely,
Derick Gallagher

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What does it mean to be a Real Estate Professional?

For most taxpayers, rental real estate falls under the IRS definition of a passive activity and that classification matters. Under the rules for passive income (the "passive activity rules"), losses from rental properties can only offset passive income. If a taxpayer's losses exceed their passive income, they don't disappear; they're carried forward to future years until the taxpayer generates enough passive income or disposes of the property entirely.

There is an exception to this general rule if a taxpayer qualifies as a real estate professional. The rental income and losses of a real estate professional are not passive, and the losses can offset other types of income. Additionally, in many cases, the net income generated from the rental real estate of real estate professionals will be exempt from the 3.8% net investment income tax.

To qualify as a real estate professional, you must meet the following tests annually:

- More than one-half of the personal services performed during the taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and

- Such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates.

Taxpayers who meet these requirements must materially participate in their rental activities for their losses to be considered nonpassive. Since this may be difficult to achieve for each separate rental real estate activity, a taxpayer can make an aggregation election to treat all their real property trade or business activities as a single activity to meet the material participation test. Note – this aggregation election is irrevocable unless there is a material change in the taxpayer's facts and circumstances. Careful analysis is required to determine if an election will be beneficial in a case where a taxpayer has carryover passive losses from rental real estate.

Real property trades or businesses include real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage. Taxpayers can combine any of these activities and treat them as one real property trade or business. To materially participate in a real property trade or business, a taxpayer must be involved in the activity on a regular, continuous, and substantial basis. The regulations provide taxpayers with a quantitative test that can be used to satisfy this requirement.

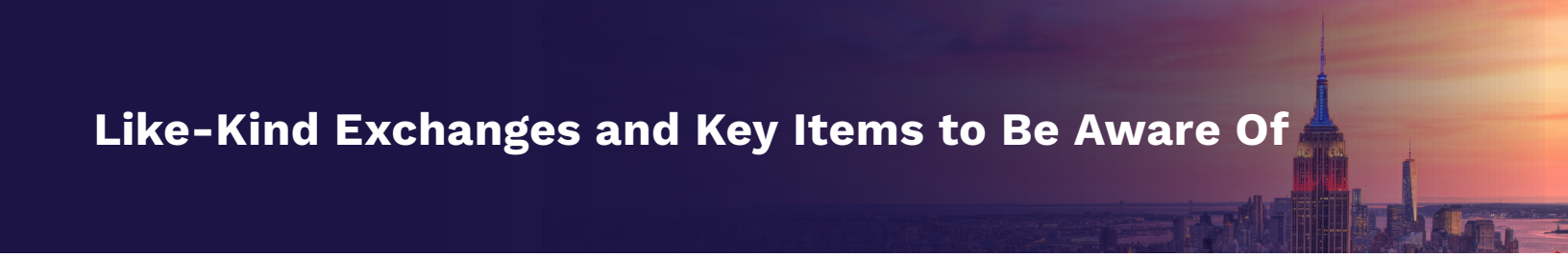
The passive activity rules also apply to trusts. Prior to 2014, there was doubt as to whether a trust was capable of performing personal services for the purpose of passing the material participation test. In 2014, the Tax Court ruled in *Frank Aragona Trust v. Commissioner* that a trust is capable of performing "personal services." The Court found that services performed by the individual trustees on behalf of the trust were considered personal services performed by the trust.

Based on this ruling, a trustee who is substantially involved in the trusts real estate business activities could allow the trust to qualify as a real estate professional and the rental income and loss would be nonpassive. It can also exempt the trust from the 3.8% net investment income tax.

Whether a taxpayer qualifies as a real estate professional is an annual determination. Taxpayers seeking to qualify as real estate professionals should carefully review these rules annually to make sure they meet the necessary requirements. A change in the real property holdings or involvement from year to year could prevent one from qualifying.

Qualifying as a real estate professional can transform the tax treatment of rental activities, turning passive losses into powerful tools for offsetting other income and potentially avoiding the 3.8% net investment income tax. However, meeting the strict annual tests and material participation requirements, often through strategic aggregation elections, requires careful planning and documentation. Because these rules are complex and subject to change based on one's level of involvement or property holdings, proactive review with a tax advisor each year is essential to ensure compliance and maximize benefits.

Like-Kind Exchanges and Key Items to Be Aware Of



Like-kind exchanges, commonly known as 1031 exchanges, have been an integral part of the real estate business for many years, since their introduction in the Revenue Act of 1921. Internal Revenue Code (IRC) Section 1031 exchanges give real estate businesses the flexibility and incentive to adjust their business strategy and assets. Owners of real estate often use Section 1031 to make tax-deferred exchanges to reinvest in larger or higher-yielding assets, diversify their portfolio, reposition assets, or part from underperforming assets.

Previously, this tax break was available for various types of property, such as trade-ins of business vehicles and artwork. As of 2018, the Tax Cuts and Jobs Act strictly limits Section 1031's applicability to real estate transactions.

Although a like-kind exchange may sound quick and easy, it is not as simple as selling one property and buying another. In this section, we will focus on a few aspects of like-kind exchanges that are frequently overlooked.

General Rules

There are general rules that apply to like kind exchanges such as using a qualified intermediary, the 45-day identification period, the 180-day replacement period, and that the property must be held for productive use in a trade or business or for investment purposes. The use of a qualified intermediary acting as an independent third party to facilitate an exchange is a safe harbor in the treasury regulations. The qualified intermediary will hold the sales proceeds of the relinquished property until such a time the owner/investor is ready to close on the replacement property. This ensures that the taxpayer does not have constructive receipt of the sales proceeds, which would trigger a taxable event. The qualified intermediary will help to ensure taxpayers meet the identification requirements.

It is essential to identify the potential replacement property within 45 days of the sale of the relinquished property. The 45 days are comprised of calendar days, not only working days, so it is critical to count Saturdays, Sundays, and holidays. In addition, one of the following three identification rules must be followed:

1	Identify up to three properties regardless of the total value of the property identified.
2	Identify any number of properties if the fair market value does not exceed 200% of the relinquished property.
3	Identify any number of properties regardless of fair market value as long as at least 95% of the property is ultimately acquired.

Please note that the replacement property must be closed within 180 days of the sale of the relinquished property.

When an exchange straddles two tax years

When the sale of the relinquished property occurs near the end of the taxpayer's tax year, the exchange may straddle two tax years. While the statute generally provides for the 180-day replacement period, the period is actually the period that ends on the earlier of:

1. The day that is 180 days after the date on which the taxpayer transferred the relinquished property, or
2. The due date (including extensions) for the taxpayer's tax return for the tax year in which the relinquished property was sold

For sales of relinquished property that occur in the fourth quarter of the year, this can result in a trap for the unwary that could result in the transaction becoming fully taxable. Taxpayers with open like-kind exchanges should make sure to file extensions for their tax returns, even if they are otherwise ready to file their returns in a timely manner. Filing before completing the exchange will cause the like-kind exchange to fail and trigger gain recognition.

What if the 1031 exchange fails?

In the case of a failed or partial like kind exchange, taxpayers may be able to defer income into the following tax year rather than the year in which the relinquished property was sold. If a sale and receipt of cash from a qualified intermediary straddles two taxable years, taxpayers can report taxable gain under the installment method. Installment sale treatment generally requires a bona fide intent to complete an exchange. This means that the taxpayer had a reason to believe, based on the facts and circumstances at the beginning of the exchange, that a replacement property would be acquired during the exchange period.

The regulations don't address whether the installment sale method applies to deemed cash received as a result of liability relief. However, the IRS formally addressed the tax consequences in a separate revenue ruling. If there is a relief of liabilities, there may be a gain recognized in the first year if the exchange straddles two years.

Like-kind exchange and cost segregation

Generally, taxpayers must depreciate the carryover basis of property acquired in a like-kind exchange during the current tax year over the remaining recovery period of the property being exchanged. They must use the same depreciation method and convention that was used for the relinquished property. Any excess basis is treated as newly placed in service property. Depreciation must be calculated separately for the carryover basis and the excess basis. This option is typically better when the relinquished property is closer to the end of its tax life. Tax rules only allow a cost segregation study (for the new property) to apply to the excess basis, not to the carryover basis.

Alternatively, taxpayers can elect to treat the adjusted basis of the exchanged property as if it was disposed of at the time of the exchange. Under this election, a taxpayer treats the carryover basis and excess basis for the acquired property as if placed in service on the date acquired. The depreciable basis of the new property is the adjusted basis of the exchanged property plus any additional amount paid for it. By making this election, the taxpayer may be able to use a more favorable method of depreciation and simplify recordkeeping, but it may result in a longer depreciation period.

Under this option, tax rules allow a cost segregation study to apply to the combined carryover basis and excess basis. The benefits of cost segregation can be significantly higher under this alternative method.

Final Regulations

In November 2020, the IRS issued final regulations defining real property for Section 1031 purposes. The distinction between real and personal property has always been important, but after the TCJA amended Section 1031 to exclude personal property, defining real property became necessary. The rules are now clear that real property under Section 1031 is still real property, even if a taxpayer did a cost segregation study and took bonus depreciation. The definition of real property for purposes of a like-kind exchange differs from the definition of real property for depreciation purposes. Taxpayers may be able to exchange real property even if they depreciated a portion of the relinquished property as personal property.

While it is good news that real estate owners can take advantage of both cost segregation and Section 1031 exchanges, the interaction of the two must be carefully examined. Depreciation recapture resulting from the cost segregation study is one of the potential issues.

Drop and Swap

Real estate held in a multi-member LLC or partnership can complicate a 1031 exchange, if some partners want to retain property and others want to cash out. To have a valid like-kind exchange, a taxpayer must exchange an interest in real estate for another interest in real estate. Exchanges of partnership interests are not valid exchanges.

The easiest solution is for those partners who wish to exchange to buy out the non-exchanging partners. The problem is that the exchanging partners must provide additional capital and the exchange is being made with all the proceeds from the sale, not just the proceeds allocable to exchanging partners. This might result in an acquisition of a larger property than needed.

One structure that is commonly used when some partners want to cash out is “drop and swap.”

Prior to the sale of the partnership’s property, the partnership distributes to each partner (generally tax-free) an undivided interest in the underlying property and liquidates. After distribution, the members hold the property as co-owners under an arrangement intended to qualify as tenancy-in-common (TIC) for purposes of the like-kind exchange rules.

Each former partner is thus an owner of an undivided interest in real estate and can exchange or not exchange into new property as they please. “Drop and swap” structures appear to be relatively simple in concept, but there are many complications, and they require careful planning.

New York State Updates

The New York Division of Tax Appeals issued a pivotal ruling this summer in the Hadar/Shomron case involving like-kind exchange law. The ruling upheld the legitimacy of a same-day “drop-and-swap” under Section 1031, rejecting the state’s position that a holding period is required before a partner can exchange distributed property. The decision affirms that, when properly structured, a partner in a real estate partnership may receive a TIC interest and immediately exchange it for a replacement property without recognizing gain — provided the property was held for investment and all federal 1031 requirements are satisfied. While a taxpayer friendly ruling for New York, this has no application at the Federal level.

Is Your Business Eligible for Enhanced Depreciation Opportunities?

Historically, depreciation has created tax-advantaged returns for real estate owners and investors. Depreciation has shielded taxpayers from income taxes on otherwise positive cash flowing properties. Below is a discussion on some of the methods available for taxpayers to accelerate depreciation. There are several options and scenarios real estate businesses need to consider when assessing what is the most beneficial for them.

Additional First Year Depreciation (Bonus Depreciation)

Bonus depreciation enables taxpayers to accelerate the depreciation of property purchased that has a recovery period of 20 years or less and is depreciated using the modified accelerated cost recovery system (MACRS). For real estate businesses, this typically includes, but is not limited to, furniture, fixtures, land improvements, flooring, cabinets and appliances.

Owners of nonresidential real estate may utilize bonus depreciation on qualified improvement property (QIP). QIP is defined as property that is an interior improvement, placed in service after the date the building was first placed in service, made by the taxpayer, and placed in service after December 31, 2017. It does not include elevators and escalators, internal structural framework and improvements that relate to the enlargement of the building.

Taxpayers that are considering offering tenant allowances should be aware that these costs could be deemed lease acquisitions costs and amortized over the life of the lease. If bonus depreciation is deemed more beneficial, care must be taken when drafting lease agreements. One consideration for owners of nonresidential real estate regarding the eligibility of utilizing bonus depreciation on QIP is if the business makes the irrevocable election out of business interest expense limitation. Should they make this election, QIP will be ineligible for bonus depreciation.

The Tax Cuts and Jobs Act (TCJA) allowed businesses to immediately expense 100% of eligible fixed-asset costs as bonus depreciation in the year the asset was placed in service. This applied to assets placed in service between September 27, 2017 and December 31, 2022. Beginning in 2023, the allowable bonus depreciation was scheduled to phase down by 20% each year, reaching 0% for assets placed in service after 2026. Prior to the passage of the One Big Beautiful Bill Act (OBBBA), taxpayers could deduct only 40% of eligible asset costs for assets placed in service during 2025. The OBBBA has now permanently reinstated 100% bonus depreciation with no future phase-outs. This applies to all assets placed in service on or after January 20, 2025.

Taxpayers should note two important timing considerations:

- Assets placed in service between January 1 and January 19, 2025 remain subject to the prior rules and are eligible for only a 40% deduction.
- Assets acquired under a written binding contract in effect before January 20, 2025 are also governed by the old phase-down schedule, with the applicable bonus percentage determined by the year the property is placed in service.

When considering bonus depreciation, real estate businesses need to assess the state implications for their owners. Many states do not conform to federal bonus depreciation and modify their income to disallow the accelerated depreciation.

This adjustment may increase state taxable income, thereby affecting cash flows if distributions are required to cover state income tax expense for the owners. If the partnership does not provide for tax distributions, this can cause an unexpectedly higher state tax liability to investors and can be an especially sensitive issue with passive investors.

Section 179 Deduction

Under IRC Section 179, eligible taxpayers may elect to expense qualifying property up to certain dollar limitations. To be eligible, property must be purchased for use in a trade or business.

Unlike bonus depreciation, it cannot create a net loss for the business. Tangible personal property (e.g., furniture, fixtures, carpets, etc.) is eligible for this deduction. For real estate businesses, the cost of "qualified real property" is also eligible, which includes QIP (discussed above) as well as the following expenditures made for non-residential real property after the property was originally placed in service: roofs, HVAC, fire protection, and alarm/security systems. Land improvements are not eligible.

For tax year 2025, the maximum deduction under Section 179 is $2,500,000 with a dollar for dollar phase out once the amount of qualified Section 179 property placed in service exceeds $4,000,000. Disallowed deductions due to trade or business limitations are carried forward indefinitely and can potentially be utilized in a future tax year.

As with bonus depreciation, businesses also need to understand the state tax implications.
There could be significant state impact on owners and investors depending on the location of the property and the residence of the taxpayer.

Cost Segregation Studies

Cost segregation studies offer real estate businesses a valuable way to accelerate depreciation. These studies identify and quantify various components within both purchased and constructed assets, allowing businesses to depreciate certain building components over shorter timeframes. Many of these identified assets qualify for bonus depreciation, further increasing the depreciation deduction.

Cost segregation studies do not need to be performed in the year the building was purchased or constructed. Businesses can implement studies in subsequent tax years. If a business chooses to implement a study in a future year, they must recalculate the depreciation that was in effect the year the building was placed in service. For example, suppose a real estate business purchases and places a property in service during 2023, and a cost segregation study is performed in tax year 2025. The business must use 80% bonus on any eligible property when the adjustment is made on the 2025 tax return since it relates to a 2023 purchase.

Tangible Property Regulations

The tangible property regulations, also referred to as the repair regulations, are often overlooked and underutilized by real estate businesses. Prior to the implementation of the repair regulations, taxpayers had to capitalize the cost of any asset that had a useful life in excess of one year and depreciate the cost of the asset over the asset's life. There was no clear definition of what a repair was, leading taxpayers to capitalize improvements that can now be expensed. The repair regulations, issued in 2014, provided guidance to taxpayers as to what improvements could be considered a repair and expensed in the year incurred. These regulations have enabled taxpayers to deduct significant improvements, which under old law may have been capitalized.

One of the most beneficial aspects of the repair regulations is that the expenditure is considered an expense, not a capitalized fixed asset with additional rules and limitations on its depreciation. There are no state adjustments that need to be made. In addition, there is no potential for a recapture of gain attributable to prior depreciation taken on the asset upon disposition. Lastly, there is no phase out or dollar limitation on the amount of qualifying improvements that can be expensed. Unless there is an Act of Congress, this provision is in the tax law indefinitely.

Conclusion

The above discussion highlights some of the high-level items that real estate businesses need to analyze when strategizing how to maximize their depreciation. Careful planning and analysis of future projects is critical to make sure depreciation is utilized in the most efficient manner.

Managing the Deductibility of Interest Expense

One of the most welcome changes introduced by the OBBBA centers on updates to IRC Section 163(j), rules that govern the deductibility of business interest expense. These changes come at a critical time for the real estate industry, where a high-interest environment makes interest deductions essential for effective cash flow management and tax planning.

The following discussion explores the limitations, ordering rules, and strategic considerations for real estate owners and businesses. Understanding these updates is essential for navigating compliance, optimizing deductions, particularly in light of the TCJA of 2017, which imposed significant restrictions on the deductibility of business interest expense.

These changes have had a profound impact on the real estate industry and are especially relevant in today's high-interest environment.

For tax years beginning after December 31, 2021, the deduction for interest expense is limited to 30% of a taxpayer's Adjusted Taxable Income (ATI). ATI is an entity's net income with interest expense added back (there are several other potential adjustments outside the scope of this article). Prior to the 2022 tax year, entities were able to add back depreciation and amortization as part of the ATI calculation, in addition to interest expense.

The sunsetting of the depreciation and amortization addbacks have further limited the deductibility of interest expense in a given tax year. The OBBBA reverses this change, once again allowing taxpayers to add back depreciation, amortization, and depletion in computing ATI. This change is retroactive to the start of the 2025 tax year, effectively increasing the amount of business interest expense that can be deducted by many taxpayers.

The bill also includes less favorable changes to Section 163(j), including a new ordering rule. Previously, the limitation under Section 163(j) was applied after determining which interest was deductible and what needed to be capitalized under an interest capitalization provision.

The new law, however, requires that the IRC § 163(j) limitation be applied before any interest capitalization provisions (with certain exceptions).

This change is intended to prevent taxpayers from indefinitely deferring the deduction of disallowed interest through capitalization and subsequent amortization. One important item to note is that any limited interest expense is suspended until there is either future income or disposition of the activity; it is not lost forever.

Fortunately, not all real estate businesses are subject to the expense limitation. Taxpayers that are considered "small business taxpayers" are exempt from this interest limitation. To qualify as a "small business taxpayer", a taxpayer's average gross receipts from the prior three years must be less than $31 million for 2025 (receipts may be aggregated amongst entities with similar ownership).

While the small business taxpayer rule can exempt a lot of entities from the limitation, taxpayers still need to consider what's known as "tax shelter" rules. An entity is considered a tax shelter if there are taxable losses for the year and more than 35% of the losses are allocated to taxpayers that are not active in the business. If deemed a tax shelter, an entity will be subjected to the interest limitation regardless of receipts.

Real estate entities that exceed the gross receipts limitation or are considered a tax shelter can elect to be a Real Property Trade or Business (RPTOB). The interest limitation described above does not apply to taxpayers who make this election. By electing to be a RPTOB, a taxpayer can deduct all its interest expense for the year the election is made and all subsequent years. Once made, the election is irrevocable.

The tradeoff for a real estate entity making the RPTOB election is longer depreciable lives. This approach requires that taxpayers switch from the MACRS method of depreciation to the alternative depreciation system (ADS) method, which uses the straight-line method over generally longer recovery periods. For example:

- For residential properties, the 27.5-year life increases to 30 years, and for commercial properties, the 39-year life increases to 40 years

- QIP depreciable life increases from 15 years to 20 years

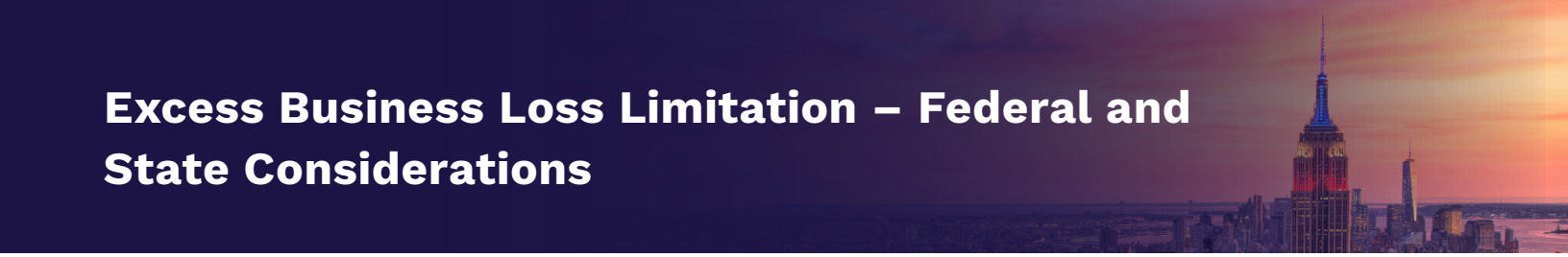
Electing entities with commercial property will also no longer be able to take advantage of bonus depreciation on QIP. The ineligibility of bonus depreciation for electing entities on QIP property can have a significant impact on taxable income or loss. While the increase in depreciable lives from 39 to 40 years may seem inconsequential, taxpayers need to consider any major future renovations or improvements before making the RPTOB election. Please note, this might have a limited impact on residential properties.

Under the OBBBA, it is less likely that a real estate owner will need to make a RPTOB election. With the restoration of 100 percent bonus depreciation, the adverse consequences of the election are now more severe. Careful analysis and planning are needed if a taxpayer is considering making the RPTOB election.

If interest expense had previously been subject to this limitation and the entity subsequently makes the RPTOB election, the previously limited interest expense could be suspended until the entity is liquidated. The taxpayer will not be able to utilize any of the suspended interest with future operating income. While interest expense will not be lost, it will be added to the basis of the activity but is not depreciable. This will result in a conversion of an ordinary interest deduction to a reduction of a capital gain.

The discussion above presents just a few of the high-level items related to interest that every real estate business should consider when planning for taxes. Taxpayers need to weigh immediate benefits compared to long term planning in order to successfully utilize interest expense deductions while factoring in any offsetting depreciation impact.

Excess Business Loss Limitation – Federal and State Considerations



Prior to the introduction of IRC Sec 461(l) – Limitation on Excess Business Losses of Noncorporate Taxpayers, individual and trust taxpayers who qualified as real estate professionals were able to deduct their real estate business losses against other sources of income, with no limitations. When business losses exceeded total income, a net operating loss (NOL) was generated in the tax year.

IRC Sec 461(l) limits the amount of excess business losses deductible in the tax year for individual and trust taxpayers. For the 2025 tax year, deductible excess business losses are limited to $626,000 for married couples filing jointly and $313,000 for single filers. Any disallowed excess business losses are treated as a net operating loss (NOL) and a carried forward to the following tax year. The NOL's will be subject to an 80-percent limitation. The NOL may offset no more than 80-percent of the taxpayer's taxable income. Any remaining NOL amount, is carried forward to subsequent tax years.

The OBBBA makes permanent the limitation on excess business losses. The new legislation also adjusts the income threshold for inflation, which applies to taxable years after December 31, 2025.

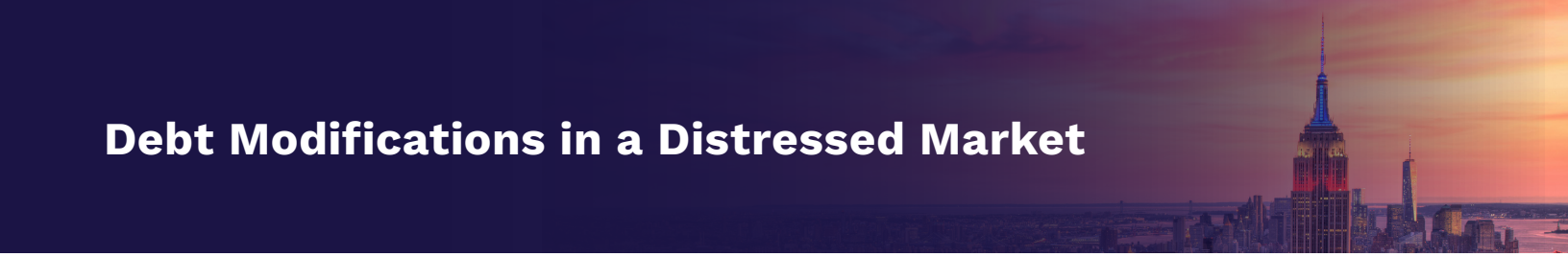
Impact on Real Estate Professionals

When a taxpayer has disallowed excess businesses losses and has bonus depreciation, the state tax impact should be evaluated. The interaction of these two can cause federal and state taxable income to differ materially. This can produce unexpected state taxable income and state tax liability, even when federal income is low or there is a federal loss. This situation is especially common for real estate professionals.

Planning Considerations

Identify this situation early. Tax projections and planning that incorporate excess business loss limitations and state modifications should identify if you are in this situation. There are tax planning decisions and strategies that can be implemented to help mitigate or alleviate this situation.

Debt Modifications in a Distressed Market



Despite the Federal Reserve's rate cuts during 2025, interest rates remain elevated, and the real estate sector continues to face exceptional challenges. In this distressed environment, property owners and lenders may explore loan renegotiations as a strategy to manage cash flow. With approximately $957 billion in commercial mortgages maturing in 2025, lenders and real estate owners to make difficult decisions where debt modifications can trigger taxable income. [1]

Real estate owners may modify their debt to better manage their cash flow by using strategies including:

- Extending the loan's maturity date;
- Changing the interest rate;
- Exercising conversion features; or
- Changing fixed payments of principal to contingent amounts.

While economically valuable, these modifications may come at a tax cost. When the original debt's issue price is higher than the new debt's issue price, the taxpayer may recognize cancellation of indebtedness (COD) income. In other words, they may have a taxable income event even though they have not received any cash proceeds.

That said, there are provisions that allow taxpayers to exclude or defer COD income.

Bankruptcy and Insolvency

In bankruptcy, taxpayers do not have to include forgiven debt as income. However, taxpayers that are insolvent, but are not bankrupt, can only exclude COD income up to the amount by which their debts are greater than the value of their assets.

Both the bankruptcy exception and the insolvency exception apply at the partner level.

Reduction of tax attributes

Being able to exclude COD income in the event of bankruptcy or insolvency comes at the cost of lowering certain tax benefits, generally in the following order:

1. NOLs;
2. General business credits;
3. Minimum tax credits;
4. Capital loss carryovers;
5. Basis of the taxpayer's property;
6. Passive activity loss and credit and carryovers; and
7. Foreign tax credit carryovers.

A taxpayer who wishes to retain net operating losses and other carryovers can elect to reduce the basis in depreciable property (or in realty held as inventory).

Qualified Real Property Business Indebtedness (QRPBI)

Subject to limitations, taxpayers who are neither bankrupt nor insolvent may have the option to exclude COD income from the discharge of QRPBI. Note, this election is not available to C corporations.

QRPBI is defined as debt that is:

1. Incurred or assumed by the taxpayer in connection with real property used in a trade or business and is secured by such real property; and
2. Was incurred or assumed before January 1, 1993, or was incurred or assumed after such date to acquire, construct, reconstruct, or substantially improve such property.

As with the bankruptcy and insolvency exceptions, the QRPBI exclusion applies at the partner, rather than the partnership, level.

To exclude income from the discharge of QRPBI, the taxpayer must make a valid election. The amount of excluded income reduces the basis of the taxpayer's depreciable real property, which is not limited to the property that was secured by the debt.

The fact that the debt must be secured by real property can create challenges when dealing with LLCs. In large acquisitions, it is typical to see multiple tranches of debt, with varying maturities, interest rates, and degrees of risk. Under an IRS safe harbor rule, debt backed by full ownership in a disregarded entity satisfies the "secured by" requirement under certain conditions, but it appears that the safe harbor allows for only one level of debt to be secured by a disregarded entity interest.

Limitations on Excludable Income

Taxpayers have two limits on how much forgiven debt income they can exclude for tax purposes. In general, the amount of income excluded cannot exceed the lesser of:

1. The excess of the outstanding debt principal (immediately before the discharge) over the fair market value of the real property securing the debt (reduced by the principal amount of any other qualified real property business debt secured by the property); or
2. The aggregate adjusted bases of all depreciable real property held by the taxpayer determined as of the first day of the tax year following the discharge (or, if earlier, the property's disposal date) — the overall limitation.

When refinancing, relief is available as long as the new loan amount doesn't exceed the amount of the original business property debt. If a partnership borrows against real property and distributes all of the additional proceeds to its partners, the additional borrowing can't be treated as QRPBI.

[1] – National Observer 5/14/2025, *Lenders face tough choices as $957B in commercial mortgages come due this year*

Pass-Through Entity Taxes (PTET) Deductibility

Earlier drafts of the OBBBA legislation had proposed eliminating or severely restricting deductions for PTETs. However, the final version of the bill does not include any such restrictions. As a result, the PTET deduction remains fully available under current law — a relief for many business owners and professional service firms that rely on PTET regimes to circumvent the federal SALT deduction cap.

It should be noted that PTET elections are enacted in 36 jurisdictions. 26 states and localities, including New York State/City, New Jersey, and Connecticut, have enacted permanent PTET regimes and five states (Colorado, Iowa, Massachusetts, Michigan, and Minnesota) have regimes linked to the federal SALT cap.

Consequently, these regimes will continue to be available with the passage of the OBBBA. However, four states (Illinois, Oregon, Utah, and Virginia) have PTET programs scheduled to sunset on December 31, 2025, and will need to pass legislation to extend these regimes. California's statute was similarly set to expire, but the state recently passed new legislation extending its PTET program for an additional five years.

Opportunity Zones – Start Planning for Gain Recognition

The Qualified Opportunity Zone (QOZ) Program, enacted as part of the TCJA, provides taxpayers with tax-enhanced returns on qualified investments made into designated opportunity zones. The program offers several key benefits, including temporary deferral of eligible gains, a step-up in tax basis for certain investments, and the exclusion of taxable gains for investments held for ten years or more. These tax advantages, combined with sound underlying economics, can significantly enhance the overall attractiveness of an investment opportunity.

Importantly, the gains reinvested and deferred under the program are not deferred indefinitely until the investment is sold or liquidated. Rather, the gain deferral represents only a temporary relief of tax liability. All gains deferred into the first QOZ program will be deemed recognized and taxable as of December 31, 2026.

Accordingly, taxpayers with QOZ investments should ensure that these deferred gains are incorporated into their 2026 tax planning and projections. Advisors — including tax preparers, financial planners, and investment professionals — should be fully informed of the deferred gains scheduled for recognition in 2026. To mitigate the tax impact, taxpayers may be able to offset the recognized capital gains with capital losses realized throughout the 2026 calendar year. Proper coordination and timing can be critical for effective tax management.

Three primary tax benefits available for QOZ investors are:

1. The ability to defer the gain until either the investment was sold or a set date (12/31/2026 under the TCJA)

2. A reduction in the amount of capital gains income from the original sale, provided that the new investment is held for a set period.

3. Permanent exclusion of gain from appreciation on the new investment if held for a set period of time.

The deferral rules for opportunity zones provide opportunities that 1031 exchanges do not. After enactment of the TCJA, only real property is eligible for section 1031 treatment. By contrast, opportunity zones allow deferral of any form of capital gain income, including section 1231 (business asset) sales treated as capital gain income and capital gain from stock sales. Additionally, in the case of a 1031 exchange, all proceeds must be reinvested in the new property, including the return of the original investment basis. In an opportunity zone investment, a taxpayer can simply take the amount of cash equal to the realized capital gain and invest it in the QOZ. Another contrast to 1031 exchanges is that the election to defer the investment in the QOZ is made by the individual members for passthrough capital gains. Notably, the opportunity zone benefits are only available for investments made with capital gain funds. Any additional cash invested is ineligible for the stepped-up basis on the new investment.

It is also important to note that not all states conform to the Federal QOZ provisions. Some states decoupled from the federal rules in later years, meaning that certain taxpayers may have already paid state tax on their deferred gains. In some cases, the same qualified fund investment may have been tax-deferred at the state level in one year but fully taxable in another.

Taxpayers should work closely with their advisors now to confirm state conformity and develop a plan in preparation for their QOZ gains that will be recognized in 2026. Early preparation will allow for cash-flow planning, strategic use of losses, and optimal coordination among advisors to minimize the overall tax burden.

Extension of the Qualified Opportunity Zone Program with New Updates

The OBBBA extended the availability of deferring capital gains by investing in qualified opportunity zones and included the following key updates:

Deferral rules: Under the earlier version of the QOZ rules, a taxpayer was able to defer the gain until the earlier of when the investment was sold or Dec 31, 2026. The basis of the original investment is zero. If the qualifying investment was held for at least five years before 12/31/2026, then the taxpayer's basis is increased by 10% of the original gain that was deferred. If the qualifying investment was held for at least seven years before 12/31/2026, then the basis is increased by an additional 5% of the original deferred gain (for a total of 15%). If the qualifying investment is held for at least 10 years, then the taxpayer can elect to have the basis equal to the FMV on the date that it is sold. This allows all post-acquisition gains to be excluded from income.

Under the new rules, which begin January 1, 2027, the income from the original sale can be deferred until the earlier of five years after the date of investment or the date on which the investment is sold or exchanged. This replaces the single cut-off date of 12/31/26 with a rolling 5-year deferral. After the investment is held for 5 years, the basis is increased by 10% of the original deferred gain (30% for qualified rural properties). If the property is held for more than 10 but less than 30 years, the taxpayer may elect to treat the basis as the fair market value on the date of sale. If an investment is held for 30 years, the taxpayer can elect to treat the fair market value at the 30-year date of the investment as the basis.

Opportunity Zone Designations:

Under the new legislation, determinations of QOZ qualification begin on July 1, 2026, and are redetermined every 10 years on July 1.

Under both the earlier and revised versions of the QOZ rules, there is a limit of 25% of the low-income census tracts to be qualified as opportunity zones (with a minimum of 25 eligible tracts per state if the number of low-income communities is less than 100). Under the TCJA, this limit did not apply to Puerto Rico. Under the OBBBA, the 25% limit is applied to Puerto Rico as well.

The eligibility rules for opportunity zones are modified to be somewhat more restrictive. Under the old rules, to qualify as a low-income community, an area had to have either: (1) a poverty rate of at least 20%, or (2) the median family income does not exceed 80% of the state's median income. The new rules are somewhat more restrictive requiring that the 20% poverty rate test be accompanied by a limit of 125% of the state median income, and the 80% median income test has been lowered to 70% of state median income. Additionally, the new rules remove the ability to qualify under the contiguous census tracts rule.

Introduction of Rural Opportunity Funds:

OBBBA added a new category of Qualified Rural Opportunity Fund, which has unique benefits. As mentioned, when the investment is held for at least 5 years, the taxpayer can exclude 10% of the original capital gain income. If the investment was made in rural funds, the taxpayer can exclude 30% of the gain. Additionally, it lowers the substantial improvement threshold to 50% of the adjusted basis. In general, for property to qualify as opportunity zone business property, it must be either original use property to the opportunity zone business or have improvements that exceed the original cost of the property. Under the new rules, rural properties will meet this threshold if they improve the property by 50% of the adjusted basis.

Anchin Observation:

The substantial improvement requirement made the opportunity zone rules difficult to meet for businesses that are not capital intensive. The lower threshold in rural funds may enable use of the QOZ program among a more diverse group of businesses.

A rural opportunity fund must hold 90% of its assets in qualified opportunity zone business property, which are entirely in rural areas. Rural areas are places with less than 50,000 inhabitants and are not contiguous and adjacent to areas with 50,000 inhabitants.

Expanded Reporting and Disclosure Requirements:

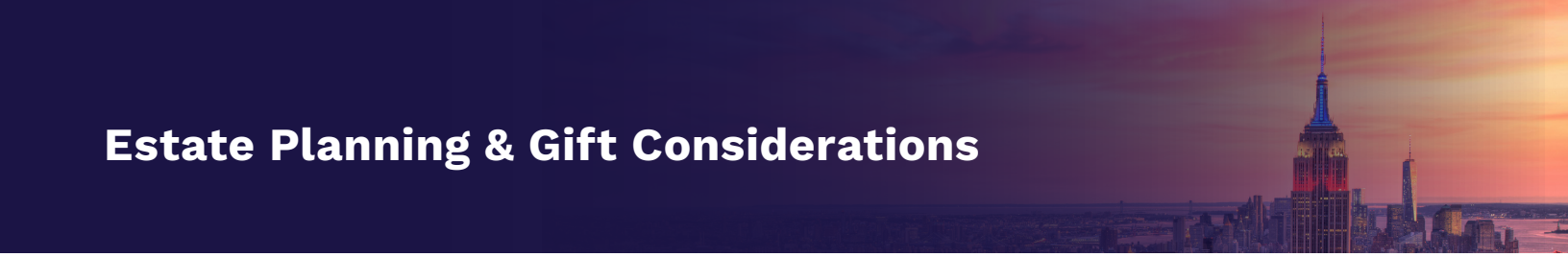
The OBBBA adds new IRC Section 6039K, which adds additional information to the required annual filings of the QOZ fund on Form 8996. Some of the new information required to be reported includes the number of employees of the business, the number of residential units in the QOZ business property, and details regarding investors who dispose of their interest in the fund during the year. Another new Section 6039L adds a requirement that the qualified opportunity zone business furnish information to the QOZ fund necessary for it to meet the reporting requirements of 6039K.

In addition to the new reporting requirements, the penalties for noncompliance are increased substantially. Under the new rules, a QOZ Fund can be subject to a penalty for non-filing of $500 per day up to a maximum of $10,000 ($50,000 for large QOZ Funds). In the case of intentional disregard, the penalty is $2,500 per day, up to $50,000 ($250,000 for large QOZ Funds).

The following provides a summary of the OBBBA's changes as compared to the original program enacted by the TCJA.

	TCJA	OBBBA
Deferral Length of Old Gain	Until the earlier of sale of the new investment or 12/31/2026	Until the earlier of sale of the new investment or 5 years after the investment was made
Exclusion of Old Gain	10% if held 5 years before 12/31/2026; 15% if held 5 years if held 7 years before 12/31/2026	10% if held for 5 years; 30% for qualified rural properties if held for 5 years
Exclusion of Gain On New Property	Permanently excluded if held 10 years	Permanently excluded if held more than 10 years and less than 30 years. If held for more than 30 years, then the amount excluded is the unrealized gain at the end of the 30 year holding period
Property Eligibility	Poverty rate of 20% or median income below 80% of state median income. Contiguous tracts eligible.	Poverty rate of 20% AND median income below 125% of state median income. Contiguous tracts not eligible.
Determination Dates	Once in 90-day period after enacted	Every 10 years on July 1, beginning July 1, 2026.
Rural Opportunity Funds	N/A	New category of QOZs. Requires a lower amount of improvements to property purchased. Allows for an exclusion of larger percentage of original gain.
Puerto Rico	All low-income communities eligible	Limited to 25% of low-income communities (same as other states)
Reporting Requirements & Penalties	Annual filing required for QOZ Funds, including basis in investments and investment value	Additional disclosures for QOZ Funds and QOZ businesses, including number of employees and number of residential units held. Penalties of $500 per day up to $10,000 or $50,000 for failure to file information returns.

Estate Planning & Gift Considerations



Under current law in effect until the end of 2025, the first $13.99 million of an individual's estate is exempt from federal estate tax. If you are a married couple splitting gifts, the effective exemption amount is $27.98 million for 2025. This amount is reduced by any gifts made in excess of the annual gift tax exclusion in a given year. In 2025, individuals can make gifts of up to $19,000 to any other individual with no gift tax consequences. This amount stays the same for 2026.

Estate and Gift Tax Updates Under the One Big Beautiful Bill Act ("OBBBA")

The recently enacted OBBBA introduces notable changes to estate and gift tax planning. Beginning in the 2026 calendar year, the lifetime estate and gift tax exemption will increase to $15 million per person (or $30 million per married couple). This exemption is still indexed for inflation and has been made permanent, eliminating the sunset provision previously scheduled under the TCJA. The expanded exemption offers a significant opportunity for high-net-worth individuals to make strategic gifts and reduce future estate tax liabilities.

Equally important, several cornerstone planning strategies remain unchanged under the new legislation. The step-up in basis at death is preserved, allowing heirs to inherit assets at their fair market value, which helps minimize capital gains tax. Additionally, popular wealth transfer vehicles such as Grantor Retained Annuity Trusts (GRATs) and Intentionally Defective Grantor Trusts (IDGTs) continue to be viable, with no new restrictions imposed. Valuation discounts for lack of marketability and control also remain available, preserving a key strategy for reducing taxable estate values.

Any gifts in excess of the annual gift tax exclusion amount will reduce the lifetime gift and estate tax exemption. A few estate tax planning techniques you may want to consider are as follows:

- **Make annual exclusion gifts by December 31, 2025:** Each person may make annual, tax-free gifts of $19,000 ($38,000 for a married couple splitting gifts) to any number of individuals. Gifting on a tax-free basis is a great option for reducing (or even eliminating) larger gift and estate taxes in the future. Taxpayers living in states with no current state gift tax may wish to accelerate or focus on additional gifting of assets in 2025. Of course, your financial security and long-term objectives should be assessed and discussed before proceeding with such a gifting strategy.

- **Grantor Retained Annuity Trusts (GRATs):** This provides you with a fixed annual amount (an "annuity") from the trust for a term of years (as short as two years under current law). The annuity retained may be equal to 100% of the amount used to fund the GRAT, plus the IRS-sanctioned rate of return (known as the 7520 rate, currently 4.6%) applicable to GRATs. After the trust term ends, the amount of assets (if any) left in the trust after the annuity payments have been made, remain in the trust, free of gift or estate taxes. Because the grantor's beneficiaries will retain the full value of the GRAT assets at the end of the trust's term, if the grantor survives the annuity term, the value of the

GRAT assets in excess of their retained annuity amount will then pass to the beneficiaries with no gift or estate tax, either outright or in further trust. If the grantor dies during the term of the GRAT, the entire balance will be included in the grantor's estate as if the (GRAT) transaction never took place. In addition, if the value of the GRAT assets fall below the amount required for the requisite annuity payments, the GRAT collapses as if the (GRAT) transaction never took place.

- **Spousal Lifetime Access Trusts (SLATs):** SLATs allow one spouse to gift assets to an irrevocable trust for the benefit of the other spouse, thereby removing those assets from the taxable estate while still retaining indirect access to the funds. This strategy can be particularly useful in leveraging the new exemption amount while maintaining financial flexibility within the family unit.

- Consider funding education through **529 plans** by December 31, 2025, to apply 2025 annual gift tax exclusion treatment to the contributions. Taxpayers can still "front load" 529 plans by making five years' worth of annual exclusion gifts to a 529 plan. In 2025, you can transfer $95,000 ($190,000 for a married couple splitting gifts) to a 529 plan without generating gift tax or using any of their gift tax exemption. The money (and the growth of the 529 account) leaves one's estate faster than if they made the contributions each year. (Note: gifts cannot be made to the same beneficiaries over the next four years without incurring a gift tax.)

- **Below Market Loans or Intra-Family Loans** are also options to be considered. Today, family members can extend long term loans to each other at interest rates less than 4.62% for long-term loans (over 9 years). It is a simple and effective estate planning mechanism for transferring wealth to children or grandchildren without gift tax. Note that when such a loan is made to a family member, interest must be charge to avoid making a gift. Therefore, to the extent that the family member earns a higher rate of return on the borrowed funds than the interest rate being paid, the excess or difference is effectively transferred free of gift taxes. The loan should be documented and executed.

- **Sales to Defective Trusts:** Transferring a real estate property into a trust as part of an estate plan, where the value of the property exceeds the available exemption could result in gift tax due. Instead of gifting the property to the trust, sell the property to a grantor trust in exchange for a down payment and a promissory note.

Planning Opportunities:

1. Note that the amount of principal not received as part of an annuity payment will be subject to the current gift tax. Since the amount is not considered a present interest (meaning beneficiaries do not have immediate use of the money), the amount will not be eligible for the gifting exclusion. In this situation, individuals should consider using a "zeroed-out GRAT" structure so that the value of the gift transferred to the beneficiary is zero.
2. Instead of setting up one GRAT to house all transferred assets, one should consider setting up multiple GRATs to house different asset types – some conservatively invested and others with more risk. The winners, or appreciated GRATs, do their job of transferring wealth to the next generation; the losers collapse, as if the GRAT for these assets never took place. In the end, all GRATs should have an economic purpose and have some risk exposure. Also, varying the beneficiaries and trust start dates may be advisable.

Charitable Contributions – Tax Strategies

The charitable deduction continues to be a flexible and beneficial option for philanthropically minded people to support their cherished causes and reap tax benefits in the process. Developing a charitable giving strategy can help taxpayers achieve the meaningful impact they envision and take advantage of tax benefits along the way.

- **Gifts to public charities:** Contributions of cash to qualified public charities can be deducted in an amount up to 60% of the taxpayer's adjusted gross income (AGI) in a given year. For contributions of appreciated publicly-traded securities, the full fair market value (FMV) of appreciated securities held over one year can generally be deducted up to 30% of AGI.

- **Gifts to private grantmaking foundations:** Contributions of cash can be deducted up to 30% of AGI, and the full FMV of publicly traded securities, if owned for over a year, can be deducted up to 20% of AGI. The deduction for gifts of other appreciated property may be limited to the taxpayer's cost basis.

Understanding the tax strategies related to charitable contributions can help you decide when and how much to give as well as which assets to give so you can maximize the amount given to charity which will enable you to receive the largest tax deduction.

Changes Implemented by the OBBBA

The One Big Beautiful Bill (OBBBA) placed the following limitations, beginning in 2026, on the charitable contribution deduction for those who itemize deductions:

- For taxpayers in the top income bracket (37%), the deduction for charitable contributions is capped at 35%.
- Taxpayers will only be able to deduct charitable contributions that exceed .5% of their Adjusted Gross Income.

Caution:

Deduction of contributions subject to the 30% and the 20% limitations are first reduced by the amount of cash contributions subject to the 60% limitation. Excess amounts not currently deductible can be carried forward for 5 years. The contribution deduction ordering rules are complex, especially when noncash property is also donated. Consulting with a tax advisor is highly recommended.

Additionally, the OBBBA gave non-itemizers access to an above the line deduction for charitable contributions beginning in 2026 as follows:

- Up to $1,000 for single filers
- Up to $2,000 for married couples filing jointly

Taking into account the changes under OBBBA, some viable strategies are outlined below:

- **Bunching Charitable Donations:** Prepaying charitable contributions on an alternating or every few years basis allows taxpayers to itemize deductions in the year contributions are made and use the standard deduction in years when there is little or no charitable giving. Bunching donations in 2025 is especially advantageous as taxpayers receive a full charitable deduction without being subject to the OBBBA limitations mentioned above. Caution should be given to not contributing amounts exceeding a taxpayer's AGI limitation in 2025 as any carryover to 2026 will probably be subjected to the limitations under OBBBA in 2026. The five year carryover of excess charitable contributions remains unchanged under OBBBA.

- **Utilize Donor Advised Funds (DAFs)** A DAF is a vehicle that could be used and makes it easy for taxpayers to bunch donations. Using a DAF, the taxpayer is able to claim an immediate charitable deduction in the year of funding and can make grants from the DAF to desired charities over a period of years. There is no current deadline as to when the donations must be given by the DAF. However, there has been proposed legislation to establish a payout period.

    - If a taxpayer is interested in creating a DAF in 2025, they can establish one as late as December 31st; however, additional time may be required if you are planning on funding the account with anything other than cash. As an alternative, large brokerage firms have their own DAFs.

- **Charitable Lead Annuity Trusts (CLATs):** CLATs are charitable trusts designed to pay an annuity to charitable beneficiaries during their term, after which the remaining assets are returned to the grantor or distributed to family members.

    - CLAT creators can enjoy a current income tax deduction for the present value of the payments expected to go to charity over the term of the trust. The discount rate is the IRS 7520 rate (currently 4.6% as of November 2025)

Planning Opportunity:

CLATs can be used to offset current income with charitable deductions, with the possibility of the remaining assets returning to the taxpayer or to family members. The CLAT can be designed to reduce current income tax and have little or no gift tax (depending on who gets any remainder and the terms of the trust). The value of the remainder depends on the performance of the CLAT's assets. Performance returns in excess of the IRS prescribed rate (the 7520 rate referenced above) result in remainder assets that can be returned to the taxpayer or be passed to family members.

- **Qualified Charitable Distribution (QCD) from an IRA:** If a taxpayer is at least age 70½, has an IRA, and plans to donate to charity this year, another consideration is to make a QCD from their IRA. This strategy can satisfy charitable goals and allows funds to be distributed from an IRA without any tax consequences. A QCD can also be appealing because it can be used to satisfy one's required minimum distribution (RMD) up to $108,000 for tax year 2025. The maximum amount is per individual with a maximum of $216,000 for a married couple filing jointly. The maximum contribution for 2026 will be $115,000 per individual.

QCDs may be attractive for taxpayers who have few other deductions or if they are already close to their charitable deduction limitations.
Because the tax-free QCD is never reported as a deduction, it is not counted against the charitable limits and does not require taxpayers to itemize deductions to be effective.

Alternatively, if a taxpayer is required to take a RMD and would like to get a charitable deduction, they could use the RMD proceeds. Although the RMD would be reported as taxable income, the charitable deduction would mostly offset the tax impact assuming there is no limit on the charitable deduction based on the taxpayer's AGI or as a result of the OBBBA limitations on charitable deductions beginning in 2026.

What about Securities?

For taxpayers contemplating making charitable contributions before year end, the most tax-effective way to do this is to donate appreciated publicly traded stock that has been held for more than a year. Doing this results in donors receive a charitable contribution deduction equal to the full market value of the securities contributed and escaping having to pay capital gains tax (and the 3.8% surtax on net investment income) on their built-in appreciation. Also, this type of donation does not require the donor to get a qualified appraisal to establish the donation value.

Most importantly this yields a much better tax result than selling the stock, paying a capital gains tax, and then deciding to use the proceeds to make cash contributions to charity.

Caution & Reminders:

1. Do not donate depreciated securities to charity. If this is the case, sell the securities first and then donate the proceeds to charity so that the capital loss can be deducted on sale and a charitable deduction can be given for the donated cash.
2. If planning to donate a non-publicly traded stock to a public charity, obtaining a qualified appraisal to establish its value is required. If this is not done, the donor will only be entitled to a charitable deduction equal to their basis in the stock.
3. The value of a donation of publicly traded securities held for a year or less is limited to the donor's cost basis.

Planning Opportunity:

Consider a partial non-liquidating distribution from investment partnership interests consisting of long-term appreciated securities in order to make charitable contributions. This planning opportunity may also be advantageous for securities received from an investment partnership subject to carried interest rules.

Before undertaking any of the above giving strategies, taxpayers should consult with their tax, legal, and/or financial advisors. Nonetheless, each of the strategies, properly employed, represents a tax-advantaged way for taxpayers to give more to their favorite charities.

Sales & Use Tax

More and more building owners and management companies are being audited by states for sales and use taxes. These audits are resulting in firms being assessed thousands of dollars in use taxes, interest, and, in some instances, penalties.

The reason these assessments are so high is twofold. First, because many real estate and management companies do not file sales and use tax returns, there is no statute of limitations. For non-filers, most states will audit the past six years. For routine filers, the statute is usually three years. Tax exams can be quite tedious and time consuming, and invoices for an exam will be needed for the past three or six years. If companies do not have all their invoices for the past six years and cannot provide proof that they paid the sales and use tax, then the state has the right to assess the use tax, even if t the tax was paid. The second reason for the large dollar assessments for building owners is that states are cracking down on what qualifies as a capital improvement. Merely issuing a certificate will not make the whole job tax exempt. In every capital improvement project, there are often taxable elements. Examples are carpeting, signage, scaffolding, window treatments, among others. When a state audits contractors, they review the contracts and make lists of building owners who have had major renovations done and refer the landlord for audit.

The popularity of buying goods on the internet from out-of-state vendors is also problematic. While this type of purchasing, as well as catalog purchases, are likely to save money, it could also open sales and use tax liability. When purchasing goods, it is important to keep in mind the state location of vendors. If the vendor does not have nexus in the purchaser’s home state, then they might not necessarily be required to collect or remit the sales tax. However, it is still the purchaser’s responsibility to remit the use tax to the state where the goods are received.

Conclusion: Key Takeaways for Real Estate Professionals

Real estate professionals should prioritize proactive tax planning now to optimize benefits and avoid costly surprises. Here are a few **key action items for real estate professionals to consider:**

1. **Real Estate Professional Status:** Confirm annual qualification to avoid passive loss limitations and potential exposure to the 3.8% net investment income tax. Aggregation elections can help meet material participation requirements but require careful analysis.

2. **Leverage Depreciation Opportunities:** With the reinstatement of 100% bonus depreciation under the OBBBA, businesses can accelerate deductions significantly. Evaluate Section 179, cost segregation studies, and tangible property regulations for additional tax savings.

3. **Plan for Interest Expense Limitations:** Understand Section 163(j) rules and consider whether electing Real Property Trade or Business status is beneficial. This election is irrevocable and impacts depreciation methods, so weigh short-term benefits against long-term consequences.

4. **Monitor Excess Loss and State Conformity:** Federal limits on excess business losses remain in place, and state-level decoupling from bonus depreciation can create unexpected liabilities. Incorporate these factors into tax planning.

5. **Evaluate Charitable Giving Strategies:** Consider bunching donations, DAFs, and qualified charitable distributions before the new OBBBA limitations take effect in 2026. Timing is critical to maximize deductions.

6. **Estate and Gift Planning:** Take advantage of the current $13.99M exemption and prepare for the permanent increase to $15M in 2026. Strategies like GRATs, SLATs, and 529 plan front-loading remain effective tools.

7. **Opportunity Zones and Like-Kind Exchanges:** Review upcoming deadlines for deferred gains and new rules under the OBBBA for QOZs. For 1031 exchanges, ensure compliance with identification and timing rules to avoid unintended gain recognition.

8. **Sales & Use Tax Compliance:** States are auditing real estate businesses for unpaid use taxes. Maintain detailed records and review vendor nexus to avoid large assessments.

The recent legislative changes under the OBBBA, combined with existing complexities in depreciation, interest limitations, and state conformity rules, underscore the importance of early and strategic decision-making. By leveraging available opportunities such as bonus depreciation, charitable giving strategies, and estate planning techniques, while mitigating risks like excess loss limitations and compliance pitfalls, real estate professionals can position themselves for optimal tax outcomes. Collaboration with experienced advisors and timely review of tax strategies will ensure that businesses not only meet compliance requirements but also maximize financial efficiency in the year ahead.