



Two changes in the new Tax Cuts and Jobs Act: Bonus depreciation and Section 179 Deduction - by Charles Tover and Ari Lasky

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Charles Tover, Madison SPECS

There are two significant changes in the new Tax Cuts and Jobs Act that will affect many property owners. Since the act is so new, some of the specifics are still undefined and clarifications and updates are expected over the coming months. We can explain what the act says, but each property owner needs to speak to his/her trusted advisors – CPAs, tax specialists, and financial advisors – to see how it applies to his/her specific facts and circumstances now and in the future.

Bonus Depreciation

One of the more significant items of the Tax Cuts and Jobs Act deals with bonus depreciation. Previously, bonus depreciation was allowed only on assets that had never been placed in service previously by any taxpayer. The bonus amount allowed for 2016 was 50% of amounts spent. The eligible property was Modified Accelerated Cost Recovery System (MACRS) Assets with useful lives of 20 years or less. The bonus depreciation percentage was scheduled to reduce to 40% and 30% for tax years 2018 and 2019 respectively.

The new law affects bonus depreciation in two important ways. First, the definition of property eligible for bonus depreciation expanded significantly. Previously, only assets that were newly constructed or had never been depreciated by a previous taxpayer were eligible for bonus depreciation. Under the new law, even used property can qualify for bonus depreciation. In this context, “used” refers to property that was placed in service previously, and depreciated by another non-related taxpayer. From a cost segregation perspective, this is a major advantage. Now segregated MACRS property with class lives of 20 years or less, which includes both tangible personal property and Section 1250 Land Improvements, on an initial acquisition, can qualify for bonus depreciation.

The second major change in bonus depreciation is that the percentage increased from 50% to 100%. The taxpayer can elect a bonus depreciation percentage of 100%, 50%, or no bonus depreciation at all. This creates an extremely useful tax-planning tool. (Note: The methodology of what the default bonus depreciation percentage is and what elections, if any, are necessary to

choose the permitted bonus depreciation percentages have not yet been defined.)

The critical date for the changes to bonus depreciation to take effect was September 28, 2017. Any qualifying assets placed in service September 28, 2017 or later can qualify for these changes to bonus depreciation.

Moreover, the importance of a properly prepared cost segregation report is now greater due to the fact that most real estate companies will need to use qualified cost segregation experts to maximize segregation of assets eligible for 100% bonus depreciation. This will allow the taxpayer/property owner to justify any amounts that may be challenged by taxing authorities.

The combination of these two major changes, and the critical dates provided under the act, offer taxpayers multiple options on how to maximize their depreciation expense strategy. To determine how these changes might affect a particular tax situation, a taxpayer should schedule a call with his trusted advisor or tax expert.

Section 179 Deduction

Another depreciation subject modified under the Tax Cuts and Jobs Act deals with Section 179 Depreciation. Essentially, Section 179 of the Internal Revenue Code allows businesses to deduct the full purchase price of equipment and/or software purchased or financed during the tax year. Previously, the amount allowed for Section 179 Depreciation was \$500,000, with certain limitations. One of the main limitations was that the Section 179 Depreciation could not create a loss. Under the new law, the Section 179 Depreciation limit increased to \$1 million. Section 179 Depreciation still cannot create a loss. In addition, Section 179 Depreciation benefits phase out once the assets placed in service exceed \$2.5 million. Accordingly, while Section 179 Depreciation is discussed in the act, each person should consult with a tax advisor to see if he/she qualifies for the benefit.

Charles Tover, CPA, is a tax director, and Ari Lasky, is a senior tax associate at Madison SPECS, Lakewood, N.J.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540