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REAL PROPERTY

IMPROVEMENTS

Improvements placed in service between 2015 & 2017

The Tax Cuts and Jobs Act of 2017 made some significant changes to the way personal and business property is deducted and depreciated.

In 2015, a fourth category of tax-favored leasehold improvement was added to the Code – Qualified Improvement Property is the rare type of 39-year property that is eligible for 50% bonus depreciation under current law, by virtue of Section 168(k)(2)(A)(iv).

Unlike qualified leasehold, restaurant and retail improvements, Qualified Improvement Property does not need to be made pursuant to a lease, nor must the building be at least three (3) years old when the improvement is placed in service. The only requirements necessary to meet the definition of Qualified Improvement Property is that the improvement be made to an interior portion of a building which is nonresidential real property, and that it be placed in service after the date the building is first placed in service.

Improvements places in service before 2015

For real property improvements placed in service before 2015, Section 168(e)(3)(E) grants the following three classes of leasehold improvements (which would otherwise have a 39-year life) an abbreviated 15-year depreciation period:

- Qualified leasehold improvements,
- Qualified retail improvement property, and
- Qualified restaurant property.

A Qualified Leasehold Improvement must be made to the interior portion of a nonresidential building, pursuant to a lease between unrelated parties, more than three (3) years after the building was first placed in service.

Qualified Retail Improvements are made to the interior portion of a nonresidential building, are used in a retail trade or business of selling tangible property to the general public, and are made more than three (3) years after the building was first placed in service.

Qualified Restaurant Property is a building or an improvement to a building, where more than 50% of the square footage of the building is devoted to preparing or serving meals.

Depreciation of improvements under the new law

Under the new Tax Cuts and Jobs Act, the definition of Qualified Improvement Property was moved from Section 168(k), the bonus depreciation subsection, to Section 168(e)(6), the "classification of property" subsection.

The new law also repealed qualified leasehold, restaurant, and retail improvements from Section 168(e)(3)(E) – the subparagraph that lists assets entitled to a 15-year life.

The next step should have been to amend Section 168 to provide a 15-year depreciation life to this condensed class of Qualified Improvement Property. Currently, there is nothing in the new law that actually gives Qualified Improvement Property a 15-year life. This should soon be fixed with a technical correction.

The new tax law has brought an entirely new level of complication to the depreciation rules, and taxpayers are advised to seek expert tax counsel in order to maximize their 2018 deductions.