

### ***Depreciation & Expensing Provisions***

#### ***Permanent: Enhanced Sec 179 Expensing***

Under [Code Sec. 179](#), a taxpayer, other than an estate, a trust, or certain noncorporate lessors, may elect to deduct as an expense, rather than to depreciate, up to a specified amount of the cost of new or used tangible personal property placed in service during the tax year in the taxpayer's trade or business. The maximum annual expensing amount generally is reduced dollar-for-dollar by the amount of [Code Sec. 179](#) property placed in service during the tax year in excess of a specified investment ceiling. Amounts ineligible for expensing due to excess investments in expensing-eligible property cannot be carried forward and expensed in a subsequent year. Rather, they can only be recovered through depreciation. The amount eligible to be expensed for a tax year cannot exceed the taxable income derived from the taxpayer's active conduct of a trade or business. And any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding tax years.

For tax years beginning in 2014: (1) the dollar limitation on the expensing deduction was \$500,000; and (2) the investment-based reduction in the dollar limitation began to take effect when property placed in service in the tax year exceeds \$2 million (the investment ceiling). Under the 2014 limits, the [Code Sec. 179](#) deduction did not phase out completely until the cost of expensing-eligible property exceeded \$2.5 million (\$2 million (investment ceiling) + \$500,000 (dollar limit)).

Under pre-Act law, for tax years beginning after 2014, the maximum expensing limit dropped to \$25,000, and the investment ceiling dropped to \$200,000. Thus, the [Code Sec. 179](#) deduction phased out completely when the cost of expensing-eligible property exceeded \$225,000 (\$200,000 (investment ceiling) + \$25,000 (dollar limit)).

In general, under pre-Act law, property is eligible for [Code Sec. 179](#) expensing if it is:

- . . . tangible property that's [Code Sec. 1245](#) property (generally, machinery and equipment), depreciated under the MACRS rules of [Code Sec. 168](#), regardless of its depreciation recovery period;
- . . . for any tax year beginning in 2010 through 2014, up to \$250,000 of qualified real property-qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property- (under a carryover limitation for qualifying real property no portion of the disallowed expensing could be carried to a tax year beginning after 2014); or
- . . . off-the-shelf computer software, but only if placed in service in a tax year beginning before 2015.

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Under pre-Act law, for tax years beginning before 2015, an expensing election or specification of property to be expensed may be revoked without IRS's consent, but, if revoked, cannot be reelected. However, for tax years beginning after Dec. 31, 2014, the expensing election, and any specification made in it, was to have been revocable only with IRS's consent.

**New law.** The Act makes the following changes to the [Code Sec. 179](#) expensing election:

- The \$500,000 expensing limitation and \$2 million phase-out amounts are retroactively extended and made permanent. ( [Code Sec. 179\(b\)](#) ), as amended by Act Sec. 124(a))
- For any tax year beginning after 2015, both the \$500,000 and \$2 million limits are indexed for inflation. ( [Code Sec. 179\(b\)\(6\)](#) ), as amended by Act Sec. 124(f))
- The rule that allows expensing for computer software is retroactively extended and made permanent. ( [Code Sec. 179\(d\)\(1\)\(A\)\(ii\)](#) ), as amended by Act Sec. 124(b))
- For tax years beginning after Dec. 31, 2014, an expensing election or specification of property to be expensed may be revoked without IRS's consent. ( [Code Sec. 179\(c\)\(2\)](#) ), as amended by Act Sec. 124(d)) Thus, the ability to revoke a [Code Sec. 179](#) election without IRS consent is made permanent.
- Qualified real property is eligible to be expensed for tax years beginning before 2016. ( [Code Sec. 179\(f\)\(1\)](#) ), as amended by Act Sec. 124(c)(1)) No portion of disallowed expensing may be carried to a tax year beginning after 2015. ( [Code Sec. 179\(f\)\(4\)](#) ), as amended by Act Sec. 124(c)(1))
- For tax years beginning after Dec. 31, 2015, expensing of qualified real property is made permanent without a carryover limitation ( [Code Sec. 179\(f\)\(1\)](#) and [Code Sec. 179\(f\)\(4\)](#) ), as amended by Act Sec. 124(c)(2)) and the \$250,000 expensing limitation with respect to qualifying real property is eliminated. ( [Code Sec. 179\(f\)](#) ), as amended by Act Sec. 124(c))
- For tax years beginning after Dec. 31, 2015, air conditioning and heating units are eligible for expensing. ( [Code Sec. 179\(d\)\(1\)](#) ), as amended by Act Sec. 124(e))

 RIA observation: The expensing break is enhanced by the de minimis safe harbor in the capitalization regs that allows businesses to elect to expense their outlays for "lower-cost" business assets. Under this safe harbor, which applies to an amount paid during the tax year to acquire or produce a unit of property (UOP), or acquire a material or supply, and generally applies to amounts paid in tax years beginning on or after Jan. 1, 2014, qualifying businesses with an applicable financial statement (AFS) can expense eligible property if the

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amount paid doesn't exceed \$5,000 per invoice (or per item as substantiated by the invoice). If the taxpayer does not have an AFS, the same rule applies except that the amount paid for eligible property can't exceed \$2,500 per invoice (or per item as substantiated by the invoice); this amount was \$500 before 2016, but IRS won't challenge an earlier use of the higher amount. Both the \$5,000 and \$2,500/\$500 amounts can be changed by published IRS guidance. Assets expensed under the de minimis safe harbor election may be deducted in the year of purchase, assuming that the costs that otherwise qualify as ordinary expenses, and assuming the costs don't have to be capitalized under the UNICAP rules of [Code Sec. 263A](#) .

 RIA observation: Under [Code Sec. 179\(d\)\(1\)\(A\)\(i\)](#) , "section 179 property" generally is any tangible property to which [Code Sec. 168](#) applies. Thus, assets to which the de minimis election applies (and which are not capitalized and depreciated) should not be counted in determining either the [Code Sec. 179](#) maximum expensing limit or the investment ceiling.

 RIA illustration. Large Corp, a calendar year corporation that has an AFS, has a written accounting policy at the beginning of 2015, which it follows, to expense amounts paid for property costing \$5,000 or less. In 2015, it pays \$750,000 to buy 500 computers at \$1,500 each, and \$250,000 to buy 50 high-speed network printers at \$5,000 each. Each computer and printer is a UOP, and the amounts paid for them meet the requirements for the de minimis safe harbor. During 2015, Large Corp also spends a total of \$1,000,000 on other equipment and business assets that are not eligible for the de minimis safe harbor and instead must be capitalized. Large Corp, which isn't subject to the UNICAP rules of [Code Sec. 263A](#) , elects to apply [Reg. § 1.263A-1\(f\)](#) (i.e., the de minimis safe harbor rule) to amounts paid in tax years beginning on or after Jan. 1, 2014. Under the final regs, Large Corp should be able to deduct \$1.5 million of the total cost of its machinery and equipment purchases during 2015 (\$1 million under the de minimis safe harbor, and \$500,000 under the [Code Sec. 179](#) expensing election).

### **Permanent: 15-YR Writeoff for Qualified Leasehold & Retail Improvements and Restaurant Property**

Qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property that was placed in service before Jan. 1, 2015 was included in the 15-year MACRS class for depreciation purposes-that is, such property was depreciated over 15 years under MACRS.

Under pre-Act law, the 15-year writeoff did not apply to property placed in service after Dec. 31, 2014.

**New law.** Effective for property placed in service after Dec. 31, 2014, the Act retroactively extends and makes permanent the inclusion of qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property in the 15-year MACRS class. ( [Code Sec. 168\(e\)\(3\)\(E\)](#) , as amended by Act Sec. 123)

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### ***Extended Through 2019: Bonus First-Year Depreciation***

Under pre-Act law, [Code Sec. 168\(k\)](#) generally allows an additional first-year depreciation deduction (also called bonus first-year depreciation) equal to 50% of the adjusted basis of qualified property acquired and placed in service after Dec. 31, 2011, and before Jan. 1, 2015 (before Jan. 1, 2016 for certain longer-lived and transportation property). The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax (AMT) purposes, but is not allowed for purposes of computing earnings and profits. The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. A taxpayer may elect out of additional first-year depreciation for any class of property for any tax year.

In general, an asset qualifies for the bonus depreciation allowance if:

- . . . It falls into one of the following categories: property to which the modified accelerated cost recovery system (MACRS) rules apply with a recovery period of 20 years or less; computer software other than computer software covered by [Code Sec. 197](#) ; qualified leasehold improvement property; or certain water utility property.
- . . . It is placed in service before Jan. 1, 2015. (Certain long-production-period property and certain transportation property may be placed in service before Jan. 1, 2016)
- . . . Its original use commences with the taxpayer. Original use is the first use to which the property is put, whether or not that use corresponds to the taxpayer's use of the property.

**New law.** The Act extends bonus depreciation for qualified property acquired and placed in service during 2015 through 2019 (through 2020 for certain longer-lived and transportation property). Eligible taxpayers will be able to claim:

- (1) a 50% bonus depreciation allowance for qualified property placed in service in 2015 through 2017 ;
- (2) a 40% bonus depreciation allowance for qualified property placed in service in 2018; and
- (3) a 30% bonus depreciation allowance for qualified property placed in service in 2019. ( [Code Sec. 168\(k\)](#) , as amended by Act Sec. 143; Joint Committee Explanation)

The percentages apply to certain longer-lived and transportation property placed in service one year later than shown in the list above. (Joint Committee Explanation)

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**Related changes.** The Act also provides that:

- After 2015, additional first-year depreciation is allowed for qualified improvement property without regard to whether the improvements are property subject to a lease, and there is no requirement that the improvement must be placed in service more than three years after the date the building was first placed in service. ( [Code Sec. 168\(k\)\(3\)](#) as amended by Act Sec. 143(b)(1); Joint Committee Explanation)
- For plants planted or grafted after Dec. 31, 2015 and before Jan. 1, 2020, 50% bonus depreciation is allowed for certain trees, vines, and plants bearing fruit or nuts when planted or grafted, rather than when placed in service. ( [Code Sec. 168\(k\)\(5\)](#) , as amended by Act Sec. 143(b)(4); Official Summary)
- The special rule for the allocation of bonus depreciation to a long-term contract is extended for five years to property placed in service before Jan. 1, 2020 (Jan. 1, 2021, in the case of certain longer-lived and transportation property). ( [Code Sec. 460\(c\)\(6\)\(B\)](#) , as amended by Act Sec. 143)

### **Extended Thru 2019: Enhanced First-Year Depreciation Cap for Autos and Trucks**

Under the luxury auto dollar limits of [Code Sec. 280F](#) , depreciation deductions (including [Code Sec. 179](#) expensing) that can be claimed for passenger autos are subject to dollar limits that are annually adjusted for inflation. For passenger automobiles placed in service in 2015, the adjusted first-year limit is \$3,160. For light trucks or vans, the adjusted first-year limit is \$3,460. Light trucks or vans are passenger automobiles built on a truck chassis, including minivans and sport-utility vehicles (SUVs) built on a truck chassis that are subject to the [Code Sec. 280F](#) limits because they are rated at 6,000 points gross (loaded) vehicle weight or less.

The applicable first-year depreciation limit is increased by \$8,000 (not indexed for inflation) for any passenger automobile that is "qualified property" under the bonus depreciation rules of [Code Sec. 168\(k\)](#) and which isn't subject to a taxpayer election to decline bonus depreciation.

Under pre-Act law, qualified property did not include property placed in service after Dec. 31, 2014 (except for certain aircraft and certain long-production-period property that had, instead, a Dec. 31, 2015 placed-in-service deadline). Thus, under pre-Act law, the \$8,000 boost in first-year depreciation allowances was not available for new cars and trucks purchased after 2014.

**New law.** For property placed in service after Dec. 31, 2015 and before Jan. 1, 2018, the Act provides that the [Code Sec. 280F](#) limitation for a passenger auto or light truck or van that is qualified property is increased by \$8,000. For an auto or light truck or van placed in service in 2018, the [Code Sec. 280F](#) limitation is increased by \$6,400. For an auto or light truck or van placed in service in 2019, the [Code Sec. 280F](#) limitation is increased by \$4,800. ( [Code Sec.](#)

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168(k)(2) , as amended by Act Sec. 143(b)(1))

### **Extended Thru 2016: Expanded Expensing Election for Costs of Film and TV Production**

Taxpayers may elect to expense production costs of qualified film and television (TV) productions in the U.S. Expensing doesn't apply to the part of the cost of any qualifying film or TV production that exceeded \$15 million for each qualifying production. The limit is \$20 million if production expenses were "significantly incurred" in areas (1) eligible for designation as a low-income community or (2) eligible for designation by the Delta Regional Authority (a federal-state partnership covering parts of certain states) as a distressed county or isolated area of distress.

Under pre-Act law, these rules did not apply to qualified film and TV productions beginning after Dec. 31, 2014.

**New law.** The Act retroactively extends for two years the expensing election for costs of film and TV production for productions beginning before Jan. 1, 2017. ( [Code Sec. 181\(f\)](#) , as modified by Act Sec. 169(a)) For productions beginning after Dec. 31, 2015, the expensing election is expanded to also apply to any "qualified live theatrical production," which is defined as a live staged production of a play (with or without music) which is derived from a written book or script and is produced or presented by a commercial entity in any venue which has an audience capacity of not more than 3,000, or a series of venues, the majority of which have an audience capacity of not more than 3,000. In addition, qualified live theatrical productions include any live staged production which is produced or presented by a taxable entity no more than 10 weeks annually in any venue which has an audience capacity of not more than 6,500. ( [Code Sec. 181](#) , as modified by Act Sec. 169(b))

### **Extended & Modified: Choice to Forego Bonus Depreciation and Claim Credits Instead**

Generally, [Code Sec. 168\(k\)\(4\)](#) permits a corporation to increase the alternative minimum tax (AMT) credit limitation by the bonus depreciation amount with respect to certain property placed in service after Dec. 31, 2010 and before Jan. 1, 2015 (Jan. 1, 2016 in the case of certain longer-lived and transportation property) if it forgoes bonus depreciation on that property.

Under pre-Act law, the above provision did not apply to such property placed in service after Dec. 31, 2014 (Dec. 31, 2015 in the case of certain longer-lived and transportation property).

**New law.** For property placed in service during 2015, the Act allows taxpayers to elect to accelerate the use of AMT credits in lieu of bonus depreciation under special rules. Beginning in 2016, the Act modifies the AMT rules by increasing the amount of unused AMT credits that may be claimed in lieu of bonus depreciation. ( [Code Sec. 168\(k\)\(4\)](#) , as amended by Act Sec. 143(b)(2))