

¶405 Section 179 Expensing of Depreciable Assets

NEW LAW EXPLAINED

Code Sec. 179 deduction limitations increased, qualified real property expensing expanded, lodging facility property made eligible, \$25,000 limit on SUVs inflation-adjusted— The overall Code Sec. 179 expensing dollar limitation is increased from \$500,000 (inflation-adjusted to \$510,000 for 2017) to \$1 million, and the investment limitation is increased from \$2 million (inflation-adjusted to \$2,030,000 in 2017) to \$2.5 million, effective for property placed in service in tax years beginning after December 31, 2017 (Code Sec. 179(b)(1) and (2), as amended by the Tax Cuts and Jobs Act (P.L. 115-97)).

These increases are permanent and will be inflation-adjusted for tax years beginning after 2018 (Code Sec. 179(b)(6), as amended by the 2017 Tax Cuts Act). The amount of the inflation adjustment is based on the cost-of-living adjustment determined under Code Sec. 1(f)(3) for the calendar year in which the tax year begins, by substituting calendar year 2017 for calendar year 1992. When adjusting the dollar limitation or the investment limitation for inflation, the resulting amount must be rounded to the nearest multiple of \$10,000.

Qualified real property definition expanded. The definition of qualified real property that taxpayers may elect to treat as section 179 is significantly expanded. Effective for tax years beginning after 2017, qualified real property is defined as (Code Sec. 179(f), as amended by the 2017 Tax Cuts Act):

- 1) Qualified improvement property; and
- 2) Any of the following improvements to nonresidential real property that are placed in service after the nonresidential real property is placed in service:
 - roofs;
 - heating, ventilation, and air-conditioning property;
 - fire protection and alarm systems; and
 - security systems

COMMENT

As under prior law, a taxpayer must elect to treat qualified real property as section 179 property (Code Sec. 179(d)(1)(B)(ii), as amended by the 2017 Tax Cuts Act). If the election is made and the total cost of all section 179 property, including qualified real property, exceeds the investment limitation (\$2.5 million in 2018) the dollar limitation (\$1 million in 2018) is subject to reduction.

Qualified improvement property is an improvement to *an interior portion* of a building that is nonresidential real property provided the improvement is placed in service after the date that the building is placed in service. However, improvements related to the enlargement of the building, an elevator or escalator, or the internal structural framework of the building are not qualified improvement property (Code Sec. 168(e), as amended by the 2017 Tax Cuts Act).

COMMENT

Previously, qualified real property eligible for expensing consisted of qualified leasehold improvement property, qualified retail improvement property, and qualified restaurant improvements and buildings that are eligible for an MACRS 15-year recovery period. Qualified leasehold improvement property is any improvement to the interior portion of a building that is not residential rental property and is made under or pursuant to the terms of a lease by the lessor or lessee. Qualified retail improvement property is any improvement to the interior portion of a building that is not residential rental property, which is open to the general public, and is used in the retail trade or business of selling

tangible personal property to the general public. The improvement to leasehold or retail improvement property must be placed in service more than 3 years after the date the building is first placed in service by any person and improvements related to the enlargement of the building, any elevator or escalator, any structural component benefitting a common area, or the internal structural framework of the building do not qualify. Qualified restaurant property is any improvement to a restaurant building or any restaurant building. No additional restrictions apply to restaurant property.

COMMENT

Qualified improvement property became a category of property eligible for bonus depreciation for property placed in service after 2015 (Code Sec. 168(k)(3), as added by Division Q of P.L. 114-113 (PATH Act), December 18, 2015). The new law does not change the definition of qualified improvement property but now includes it as a category of property eligible for expensing under section 179 as “qualified real property.” Under the new law, qualified real property also includes roofs, HVAC property, fire protection or alarm systems, and security systems placed in service in or on a commercial building after the building is placed in service. Under prior law, qualified real property included only 15-year leasehold improvement property, 15-year retail improvement, and 15-year restaurant improvements and buildings.

COMMENT

A separate provision eliminates the 15-year recovery period for 15-year leasehold improvement property, 15-year retail improvement, and 15-year restaurant improvements and buildings effective for property placed in service after 2017 (Code Sec. 168(e)(3)(E), as amended by the 2017 Tax Cuts Act). In its place, Congress intended to assign a 15-year recovery period for qualified improvement property (Conference Report on H.R. 1, Tax Cuts and Jobs Act (H. Rept. 115-466)). However, the final bill text, while eliminating the 15-year classifications for leasehold improvement property, etc., inadvertently failed to assign a 15-year recovery period to qualified improvement property. A technical correction may be necessary unless a correction is made to the enrolled bill text before it is signed by the President. See ¶425 for details..

COMMENT

The new section 179 provision is unfavorable to restaurant owners. Previously, restaurant buildings, and improvements to the exterior as well as the interior of a restaurant building qualified for expensing. Under the new law, a restaurant improvement (or improvement to any other type of building) must meet the definition of “qualified improvement property.” This means that only internal improvements to a restaurant building (and also roofs, HVAC property, fire protection and alarm systems, and security systems) will qualify for expensing. Furthermore, restaurant buildings are not “qualified improvement property” and, accordingly, can no longer be expensed.

Exclusion for property used in connection with lodging repealed. Effective for property placed in service in tax years beginning after December 31, 2017, property that is used predominantly to furnish lodging or in connection with the furnishing of lodging qualifies for expensing under section 179 (Code Sec. 179(d)(1), as amended by the 2017 Tax Cuts Act).

COMMENT

The primary impact is to allow expensing of section 1245 property purchased for use in connection with a residential rental building. See “*Background*” section above for examples of types of property are used in connection with the furnishing of lodging and are now eligible for expensing.

\$25,000 limit on certain vehicles adjusted for inflation. The \$25,000 maximum Code Sec. 179 deduction that may be claimed on specified vehicles that are exempt from the luxury car caps will be adjusted for inflation in tax years beginning after 2018 (Code Sec. 179(b)(6), as amended by the 2017 Tax Cuts Act).

COMMENT

The \$25,000 limit applies to a sport utility vehicle, a truck with an interior cargo bed length less than six feet, or a van that seats fewer than 10 persons behind the driver's seat if the vehicle is exempt from the Code Sec. 280F annual depreciation caps because it has a gross vehicle weight rating in excess of 6,000 pounds or is otherwise exempt (Code Sec. 179(b)(5)).

The amount of the inflation adjustment is based on the cost-of-living adjustment determined under Code Sec. 1(f)(3) for the calendar year in which the tax year begins, but substituting calendar year 2017 for calendar year 1992. When adjusting the dollar limitation or the investment limitation for inflation, the resulting amount must be rounded to the nearest multiple of \$100.

Effective date. The provisions apply to property placed in service in tax years beginning after December 31, 2017 (Act Sec. 13101(d) of the Tax Cuts and Jobs Act).