



How the PATH Act Impacts Tax Planning for Fixed Assets and Depreciation

On Dec. 18, 2015 the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) was passed. This Act extends and updates a number of tax provisions.

After the drastic changes to capitalization rules brought on by the new Tangible Property Regulations, the changes under the PATH Act are minor by comparison. However, the updates included in the PATH Act will help clarify many rules that have been temporary over the last few years.

Extension of 15-year recovery period for certain real property: Since 2004 certain real property has been eligible for 15-year treatment. This property has included Qualified Restaurant Property, Qualified Retail Property and Qualified Leasehold Improvements. While the fundamentals of this treatment have been somewhat consistent over the last few years, these provisions have been temporary. Under the new rules, Congress has provided certainty for the treatment of these assets.

Qualified Leasehold Improvements consist of improvements to an interior portion of a building that is non-residential real property provided that the building is more than 3 years old. Additionally, the improvements need to be completed pursuant to a lease between unrelated entities. It is important to note that tenant common areas do not apply. Tax

practitioners must pay special attention to the 3-year rule and the related entity rules. If the building is less than 3 years old, or if the property is leased to a related entity, these rules would not apply and the improvements would be 39-year real property.

Qualified Restaurant Property does not have some of the restrictions of Qualified Leasehold Property. To qualify, more than 50 percent of Qualified Restaurant Property must be used for the preparation of and seating for on-site food consumption.

Qualified Retail Property costs include property installed to the interior of a building that is used in retail. In order to qualify as Retail Property the building has to be over 3 years old at the time the improvements are installed.

Extension of Bonus Depreciation: In recent years Bonus Depreciation has been another one of the “Permanently Temporary” provisions of the tax code. Congress has often waited until the end of the year to extend it on a retroactive basis. This new law looks to clarify Bonus Depreciation at least for the next few years. Under this new law, eligible property will receive a Bonus Depreciation for assets placed in service through 2019, with an additional year for certain long production property. For assets placed in service in 2015, 2016 and 2017 the Bonus

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Depreciation percentage remains at 50 percent dropping to 40 percent for 2018 and 30 percent for 2019.

The provision also modifies Bonus Depreciation to include qualified improvement property for property placed in service after Dec. 31, 2015. Notably this strikes the requirement for the property to be a leasehold improvement. However, it does state that the improvements cannot be for structural, expansions or elevators/escalators. As such certain bathroom and other interior remodels may be eligible for bonus treatment. It will be important for taxpayers to review this provision, along with the tangible property provisions to determine the best treatment moving forward.

Permanent Extension of Increased 179 Expensing: This new law permanently extends the increased 179 expensing limits and phase-out amounts. Prior to this law, the 179 expensing limit had dropped to \$25,000 with a \$200,000 phase out. Under this new provision, the expensing limit is raised to \$500,000 with a \$2 million phase out. Additionally, starting in 2016 the new law indexes these higher limits for inflation, and eliminates the \$250,000 cap on qualified real property starting in 2016.

Extension of 179D Energy Efficient Tax Deduction: The new law extends the 179D tax deduction retroactively for 2015 and prospectively one year for 2016. For 2015 the 179D tax deduction retains the rules from 2014 with no changes. Starting in 2016 the IRS will require the buildings to be compared to a standard building under ASHRAE Standard 90.1-2007 (up from standard 90.1-2001 in 2015).

Many of these changes create opportunities for tax planning during 2016 and beyond. If you have any questions or would like to discuss further please feel free to contact McGuire Sponsel.

