QUALIFIED IMPROVEMENT PROPERTY UNDER THE CARES ACT OF 2020

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The Coronavirus Aid, Relief, and Economic Security (CARES) Act was enacted on March 27 to provide economic relief to taxpayers during the pandemic. One provision of the Act benefits nonresidential property owners by correcting a "technical glitch" contained in the Tax Cuts and Jobs Act (TCJA) of 2017. The glitch mistakenly defined qualified improvement property (QIP) as 39-year property instead of 15-year property, as originally intended. As a result, taxpayers were prevented from taking advantage of 100% bonus depreciation for improvements made to an interior portion of a building and were required to depreciate those improvements over 39 years.

The CARES Act corrected this error retroactively to January 1, 2018, redefining QIP as 15-year property, eligible for bonus depreciation. As a result, there is now an opportunity for property owners to save tax dollars by either amending their 2018 and 2019 tax returns or by filing an automatic consent form 3115 to catch up on tax depreciation.

The AJCA of 2004

The American Jobs Creation Act provided for 15-year treatment of certain leasehold and restaurant and retail improvements to the interior of nonresidential buildings — qualified leasehold improvements (QLHI) and qualified restaurant improvements (QRI). These improvements had to (i) be made under a lease not between related parties, (ii) be section 1250 property, (iii) be made to an interior portion of the building and (iv) be placed into service not sooner than three years after the building was acquired by the taxpayer. QLHI and QRI do not include the enlargement of a building, elevators or escalators, structural components that benefit a common area or internal structural framework.

The PATH Act of 2015

The Protecting Americans from Tax Hikes Act made permanent the QLHI life of 15 years and also created a new category called qualified improvement property (QIP), established for the purpose of bonus depreciation. QIP differs from QLHI in the following important ways:

1. Property does not have to be subject to a lease; therefore, improvements to an interior portion qualify
2. Does not exclude related party leases
3. No three-year waiting period
4. Common area improvements qualify

Like QLHI, QIP does not include enlargements of buildings, elevators or escalators or the building's structural framework.

The TJCA of 2017

The Tax Cuts and Jobs Act helped to streamline what kind of real property qualifies as 15-year property by eliminating the three previous categories (QHLI, QRI and qualified retail improvements) and establishing that QIP may be used only for bonus eligibility. The language inadvertently eliminated the 15-year life for QIP (the "technical glitch"). This was finally corrected by the CARES Act of 2020.

Bonus Depreciation Opportunities

Now that the correction has been made, taxpayers who own nonresidential real estate used in their own businesses or who are landlords should review their 2018 and 2019 tax returns to determine whether to file an amendment or an automatic consent form 3115 in order to take advantage of bonus depreciation opportunities.

Another Glitch

There is another "glitch" in the regulations with respect to partnership refund claims under the Centralized Partnership Audit Rules, for partnerships that could not or did not elect out of those new rules. If the partnership did not elect out, any change in the partnership would not be pushed out to the partners in the prior year and would have to carry to the current year.

The good news is that Revenue Procedure 2020-23 was issued in April 2020, allowing partnership returns to be amended for 2018 and 2019, provided they are done by September 20 and the partnership files the amended return with the words "Filed Pursuant to Rev Proc 2020-23" at the top of the return and all respective schedule K-1s.

Every case is different. Please consult your tax advisor.