

Understanding Changes to Bonus Depreciation and Section 179 for the Real Estate Industry

Over the past ten years, depreciation laws have changed on a near-annual basis. Failure to apply these changes correctly may have a significant impact on an organization's taxable income. Bonus depreciation was reinstated, retroactive to January 1, 2010, by the Job Creation Act of 2010 and the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010.

As of this writing, the rules for Bonus Depreciation and Section 179 expensing have changed for 2012, as compared to 2011. While Congress has suggested that some of the previous laws may be reinstated (and possibly retroactively to the beginning of 2011), there are no assurances that this will happen.

As such, following is a summary of the significant changes to bonus depreciation and Section 179 expensing rules for 2012. Due to these changes, companies may benefit from completing new projects by the end of this year or conducting cost segregation studies.

Bonus Depreciation (additional first-year depreciation deduction)

For 2012, bonus depreciation has been reduced to 50 percent of qualifying assets acquired and placed in service in 2012 (as compared to 100 percent in 2011). Bonus depreciation has been eliminated for assets placed in service after 2012, except for certain property with long production periods.



Generally speaking, bonus depreciation applies to new property with a recovery period (tax life) of 20 years or less and Qualified Leasehold Improvement Property ("QLIP"). QLIP refers to improvements to the interior of non-residential real property if the following exists: 1) pursuant to a lease by the lessee, any sublessee, or the lessor; 2) between unrelated parties; 3) occupied exclusively by the lessee or sublessee; 4) improvement is Section 1250 property (generally building components); and 5) improvements placed in service more than three years after the date that the building was first placed in service. Non-qualifying improvements include 1) enlargement of the building; 2) elevators and escalators; 3) structural components that benefit a common area; and 4) internal structural framework.

Qualified Restaurant Property ("QRP") and Qualified Retail Improvement Property ("QRIP") were not subject to bonus depreciation in 2011 and are not in 2012, unless they also meet the definition for QLIP.

QRP, starting in 2009, is defined as a building and improvements to a building if more than 50 percent of the building's square footage is devoted to the preparation of, and seating for, on-premises consumption of prepared meals.

QRIP includes improvements to an interior portion of a nonresidential building if that portion of the building is open to the general public and is used in the retail trade or business of selling tangible personal property to the

general public, and the improvement is placed in service more than three years after the date the building was first placed in service. Improvements made by an owner qualify as QRIP so long as such improvements are held by such owner. A lease is not required. Non-qualifying improvements are the same as for QLIP.

For 2012, all leasehold improvement property is depreciated over 39 years, versus 15 years, which was the case in 2011.

Section 179 (expensing qualifying property additions)

For 2012, the maximum deduction under Section 179 is \$139,000 (as compared to \$500,000 in 2011) with the phase-out of the deduction starting at \$560,000 (as compared to \$2,000,000 in 2011). Section 179 is fully phased out when qualifying additions reach \$699,000 in 2012 (as compared to \$2,500,000 in 2011). Section 179 generally applies to both new and used property.

For 2013, the maximum deduction under Section 179 reverts to \$25,000, with the phase-out of the deduction starting at \$200,000. Section 179 is fully phased out when qualifying additions reach \$250,000 in 2013.

After 2011, there is no provision to include any qualifying leasehold improvements under Section 179 (as compared to up to \$250,000, of the \$500,000 maximum, in 2011).

To further illustrate the impact of the changes in bonus depreciation and Section 179, following are three examples:

- **Example One:** In 2011, a company leased space in a building and spent \$1,000,000 for leasehold improvements ("LHI") and \$500,000 for furniture, fixtures, and equipment ("FF&E"). The LHI meet the QLIP definition noted above.

If the LHI and FF&E are placed in service by December 31, 2011, both the LHI and the FF&E would be subject to 100 percent bonus depreciation.

If the LHI and FF&E are placed in service **after** December 31, 2011, for example January 15, 2012, both the LHI and the FF&E would be subject to only 50 percent bonus depreciation

bonus depreciation. **The difference in first-year depreciation is about \$450,000.**

If the property is completed in **2013**, the FF&E and the land improvements would not be subject to bonus depreciation. **The difference in first-year depreciation is about \$835,000.**

For 2012, the maximum deduction under Section 179 is \$139,000 (as compared to \$500,000 in 2011) with the phase-out of the deduction starting at \$560,000 (as compared to \$2,000,000 in 2011).

with the remaining 50 percent depreciated over 39 years (LHI) and five years (FF&E), respectively. **The difference in first-year depreciation is over \$725,000.**

If the LHI and FF&E are placed in service **after** December 31, 2012, neither the LHI nor FF&E are subject to bonus depreciation. The LHI would be depreciable over 39 years. The FF&E would be depreciable over five years. **The difference in first-year depreciation is over \$1,462,000.**

- **Example Two:** In 2011, a company completed the construction of a \$5,000,000 commercial property (office, warehouse, shopping center, etc.). A cost segregation study allocates \$750,000 to FF&E and \$250,000 to land improvements (paving, curbing, etc.). For 2011, if the construction commenced after September 8, 2010, the FF&E and the land improvements will qualify for 100 percent bonus depreciation. The remaining \$4,000,000 attributable to the building will be depreciated over 39 years. **First year depreciation would be about \$1,050,000.**

If the property is completed in **2012**, the FF&E and the land improvements would be subject to only 50 percent

- **Example Three:** In 2011, a company leased space in a building in New York City and spent \$400,000 for LHI and \$200,000 for FF&E. The LHI meet the QLIP definition noted above. The company has sufficient taxable income to take a Section 179 deduction.

Since New York State and New York City accept the Federal Section 179 deduction, there is a distinct advantage to using Section 179 over bonus depreciation (as most states do not accept bonus depreciation). If the LHI and FF&E are placed in service by December 31, 2011, the company would first take a Section 179 deduction of \$200,000 for FF&E, plus a Section 179 deduction of \$250,000 for LHI (the maximum allowed in 2011). The remaining \$150,000 of LHI would be deducted as 100 percent bonus depreciation. The result is the same for Federal tax purposes (a \$600,000 deduction using both Section 179 and bonus depreciation), but by using Section 179, there would be a New York Section 179 tax deduction of \$450,000, with the remaining \$150,000 of LHI depreciated over 15 years.

(Each state has different rules and limitations for Section 179

and those rules and limitations can impact the decision to use Section 179.)

If the LHI and FF&E are placed in service **after** December 31, 2011, for example January 15, 2012, the Section 179 deduction would be limited to \$139,000. The balance

of the FF&E (\$61,000) would be subject to 50 percent bonus depreciation with the remaining 50 percent depreciated over five years. The LHI would be subject to 50 percent bonus depreciation (if it meets the QLIP definition) with the remaining 50 percent depreciated over 39 years.

If the LHI and FF&E are placed in service **after** December 31, 2012, the Section 179 deduction would be limited to \$25,000. The balance of the FF&E (\$175,000) would be depreciated over five years. The LHI would be depreciable over 39 years.

	<u>2011</u>	<u>2012</u>	<u>2013</u>
Bonus Depreciation (New Property)			
Personal Property (i.e. furniture and equipment) IRC §1245	100%	50%	0%
Qualified Leasehold Improvement Property as defined in IRC §168(k)(3) (QLIP)	100%	50%	0%
Qualified Restaurant Property IRC §168(e)(7) (QRP)	0%	0%	0%
Qualified Retail Improvement Property IRC §168(e)(8) (QRIP)	0%	0%	0%
Building and improvements IRC §1250	0%	0%	0%
	<u>2011</u>	<u>2012</u>	<u>2013</u>
Tax Lives/Depreciation Method			
Personal Property (i.e. furniture and equipment) IRC §1245	5 or 7 years DDB	5 or 7 years DDB	5 or 7 years DDB
Qualified Leasehold Improvement Property as defined in IRC §168(k)(3) (QLIP)	15 Years S/L	39 Years S/L	39 Years S/L
Qualified Restaurant Property IRC §168(e)(7) (QRP)	15 Years S/L	39 Years S/L	39 Years S/L
Qualified Retail Improvement Property IRC §168(e)(8) (QRIP)	15 Years S/L	39 Years S/L	39 Years S/L
Building and improvements IRC §1250	39 Years S/L	39 Years S/L	39 Years S/L
	<u>2011</u>	<u>2012</u>	<u>2013</u>
Section 179 (New or Used Property)	Max Amount/Phase Out Commences		
Personal Property (i.e. furniture and equipment) IRC §1245	\$500,000/\$2,000,000	\$139,000/\$560,000	\$25,000/\$200,000
Qualified Leasehold Improvement Property as defined in IRC §168(k)(3) (QLIP)	\$250,000/\$2,000,000 (*)	\$0	\$0
Qualified Restaurant Property IRC §168(e)(7) (QRP)	\$250,000/\$2,000,000 (*)	\$0	\$0
Qualified Retail Improvement Property IRC §168(e)(8) (QRIP)	\$250,000/\$2,000,000 (*)	\$0	\$0
Building and improvements IRC §1250	\$0	\$0	\$0

* \$250,000 amount included as part of \$500,000 annual maximum

As a result of these changes, real estate companies should try to complete new projects by December 31, 2012, and consider a cost segregation study to help maximize depreciation deductions. ■

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