Real estate companies may be eligible for more favorable tax depreciation of qualified improvement property (QIP) as the result of the CARES Act that President Trump signed into law on March 27, 2020. QIP generally includes interior improvements to nonresidential property, so these benefits may be particularly important for restaurant and retail property.

Under the 2017 Tax Cuts and Jobs Act (TCJA), QIP was intended to be depreciable over a 15-year period and be eligible for 100% bonus depreciation. Due to a drafting error, however, QIP was given a recovery period of 39 years and was not eligible for bonus depreciation.

The CARES Act has fixed this so-called "retail glitch." Now, QIP is generally depreciable over a 15-year period and is eligible for 100% bonus depreciation. The 15-year period and bonus depreciation provisions are effective as if they had been enacted under the TCJA in 2017. Therefore, taxpayers might be able to amend their returns for 2018 or 2019 to claim these benefits and receive a refund. These refund claims may be filed now, but there may be some delay before these refunds are paid. The IRS, like other employers, has revised operations in order to protect the health of its employees.
In addition, there are two potential obstacles that might prevent real estate companies from benefiting from these new rules.

**INTEREST LIMITATION UNDER SECTION 163(J)**

The 15-year period and bonus depreciation are not available when the taxpayer is a "real property trade or business" that has made an election to avoid the limitations on interest deductions imposed by Section 163(j) of the Tax Code. With such an election, QIP must be depreciated over a 20-year period, and bonus depreciation is not allowed. This election is irrevocable, and once made it applies to all subsequent tax years. As a result, if a taxpayer has already made this election for a prior tax year, its QIP will not be eligible for the 15-year period or bonus depreciation. If a taxpayer has not already made this election and is weighing whether to make this election for 2020 or a future tax year, it should take into account these new depreciation rules.

**TAX REFUNDS NOT AVAILABLE FOR PARTNERSHIPS**

Although the new depreciation rules are technically applicable to the 2018 and 2019 tax years, taxpayers might not be entitled to a refund or other tax benefit if the property is owned by an entity that is treated as a partnership for tax purposes. Under the new partnership audit rules, refunds are generally not available. Instead, partners effectively receive a non-refundable tax credit that can only be used in the year the returns are adjusted (e.g., 2020); this "credit" cannot be carried forward or back to some other year. Therefore, if a partner will have net losses for 2020, it will receive no tax benefit from adjustments a partnership makes to its 2018 or 2019 return to reflect the new depreciation rules. In fact, those partnership adjustments could increase the total amount of tax that the partner must pay. It is therefore critical to take the new partnership audit rules into account before adjusting a partnership’s tax return. This issue is discussed in greater detail in my Tax Notes article, "The Push-Out Election and AARs Might Not Get You Back to Kansas," 165 Tax Notes 1429 (December 2, 2019).

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