

One Big Beautiful Bill Act, H.R. 1 - 119th Congress (2025-2026): Part X - One Hundred Percent Expensing Lives On

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In this last installment of our multi-part series on the One Big Beautiful Bill Act (the "OBBBA"), my colleague, [George Bonini](#), and I discuss three provisions of the OBBBA that impact many businesses, particularly those in manufacturing and capital-intensive industries.

Bonus Depreciation

As a result of the Tax Cuts and Jobs Act of 2017 ("TCJA"), businesses were permitted to immediately deduct (or expense) 100% of the cost of certain qualifying property placed into service during the taxable year instead of depreciating the property over several years. The deduction, commonly referred to as bonus depreciation, was scheduled to phase down by 20% each year starting in 2023 and be fully eliminated by the end of 2026.

The concept of bonus depreciation is not new to our tax laws. Various iterations of the concept have been in the Internal Revenue Code ("Code") for decades. In general, the impetus for bonus depreciation is twofold, namely: (i) to stimulate business investment in qualified property such as machinery and equipment; and (ii) to enhance the cash flow of businesses, allowing greater investment in operations, including expanding the workforce.

Under Code Section 168(k), to qualify for the TCJA's bonus depreciation, property acquired by the taxpayer must constitute "Qualified Property." Subject to specified exceptions, Qualified Property under the TCJA includes property that the Code assigns a depreciation recovery period of 20 years or less.

Section 70301 of the OBBBA makes this provision of the TCJA a so-called permanent provision of the Code and recalibrates it at a fixed level of 100%. Consequently, because of the OBBBA, 100% bonus depreciation is a continuing feature of the Code that will not be allowed to sunset at the end of 2026, unless lawmakers decide to revisit the issue.

The new law applies to Qualified Property that is acquired and placed in service after January 19, 2025. For this purpose, except as provided in Treasury Regulations, property is deemed to have been acquired on the date that a binding written contract for the acquisition of Qualified Property was entered.

PRACTICE ALERT: The acquisition of Qualified Property that occurred on or prior to January 19, 2025, would not qualify for 100% bonus depreciation under the OBBBA, even if the property was placed in service later in 2025. Rather, the property in such case would be eligible for 40% bonus depreciation under pre-OBBBA law.

This provision of the OBBBA offers businesses the opportunity to reduce the cost of Qualified Property through current tax savings. It creates a huge incentive for taxpayers to invest in their businesses.

Another Opportunity Under the OBBBA

Section 70307 of the OBBBA introduces new Code Section 168(n), which creates another meaningful tax planning opportunity for businesses, particularly manufacturers. This new provision permits 100% expensing of certain non-residential real property used in the production of tangible personal property, which historically was depreciable over a 39-year recovery period. This is a major departure from previous law.

In order to qualify for this benefit under the new law, certain requirements must be met. First, the property must constitute "Qualified Production Property" ("QPP"), which generally includes non-residential real property used as an integral part of a "Qualified Production Activity" ("QPA"). QPA is generally defined to include manufacturing, agricultural production or refining operations.

Moreover, to qualify as a QPP, construction needs to have started between January 20, 2025, and December 31, 2029. Further, the QPP must be placed in service before January 1, 2031. Additionally, the QPP must be located in the United States.

PRACTICE ALERT: This provision of the OBBBA is temporary. As stated above, the QPP must be placed in service before 2031.

This provision of the OBBBA is intended to encourage additional U.S. manufacturing investment by allowing eligible businesses immediate expensing of qualified real estate investments. Be aware, there remains some uncertainty with respect to certain definitions contained in the new Code Section 168(n). We expect additional regulatory guidance to be forthcoming. In addition, it is important to note that, if QPP ceases to be used for a QPA within 10 years, recapture of the previously allowed deductions will be triggered.

Code Section 179 Expansion

Finally, the OBBBA provides an expansion of planning opportunities under Code Section 179 relating to expensing certain depreciable property. Code Section 179, while analogous to bonus depreciation in many respects, has its own distinct rules and limitations.

Code Section 179 affords businesses the opportunity to deduct the full purchase price of qualifying depreciable property placed into service during the taxable year, rather than depreciating it over a period of years known as the property's useful depreciable life. The OBBBA increases the maximum current year deduction under Code Section 179 from \$1 million to \$2.5 million. Additionally, the current deduction under Code Section 179 was phased out to the extent the capital investment exceeded \$2.5 million. The OBBBA increases that threshold to \$4 million. These increases are intended to keep pace with inflation and provide small to mid-size businesses with the opportunity to immediately expense a greater portion of the capital investment in their businesses. Both amounts are indexed for inflation.

Conclusion

The opportunities, particularly for manufacturing and certain capital-intensive businesses, created by the OBBBA include: (1) the permanent restoration of 100% bonus depreciation; (2) the adoption of Code Section 168(n) and QPP expensing; and (3) the enhancement of the benefits afforded by Code Section 179. Each of these provisions provides new tax planning opportunities for businesses. In particular, the restoration of 100% bonus depreciation provides businesses with long-term certainty and immediate tax benefits for the purchase of eligible property. The introduction of Code Section 168(n) extends, at least temporarily (i.e., until the end of 2030), a similar benefit to production-related real property. Finally, Code Section 179 is enhanced for inflation and offers continued support to small and mid-sized businesses.

PRACTICE ALERT: The OBBBA changes to Code Sections 168(k) and 179, as well as the temporary addition of Code Section 168(n), may not exist under applicable state and local tax laws. Tax advisers need to be alert to applicable state and local tax laws when using these new planning tools.

Businesses and their tax advisers need to carefully examine these provisions of the OBBBA to determine their applicability and whether their application will be helpful.

Over the past couple of months, we've explored some of the OBBBA's most significant tax provisions, breaking them down into practical insights for tax advisers, taxpayers and businesses alike. Thank you for following along; I hope our multi-part series on the provisions of the OBBBA has been informative and provided clarity around its sweeping reforms.

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