

AN ALERT FROM THE BDO FEDERAL TAX PRACTICE

# BDO KNOWS:

## FEDERAL TAX



### SUBJECT

## OPPORTUNITY FOR FISCAL YEAR TAXPAYERS TO CLAIM MISSED BONUS DEPRECIATION ON 2015 ASSETS

### SUMMARY

A highlight of the Protecting Americans from Tax Hikes Act of 2015 ("PATH Act") is the five-year extension of additional first-year depreciation, or "bonus depreciation," from 2015 through 2019. Enacted on December 18, 2015, the "PATH Act" retroactively extended 50-percent bonus depreciation to apply to qualified property placed in service in 2015. The enactment came too late for some fiscal year taxpayers that had already filed federal tax returns for tax years beginning in 2014 and ending in 2015, and for taxpayers with a taxable year of less than 12 months beginning and ending in 2015. Consequently, these taxpayers may have failed to claim bonus depreciation on their tax returns for qualifying property placed in service in 2015. Recently, the Internal Revenue Service issued relief guidance in Rev. Proc. 2016-48 to provide affected taxpayers with procedures for claiming, or not claiming, the 50-percent bonus depreciation on such property.

### DETAILS

#### *Background*

In recent years, section 168(k) of the Internal Revenue Code provides an additional first-year depreciation deduction equal to 50 percent of the unadjusted depreciable basis of certain qualified property. For both regular and alternative minimum tax ("AMT") purposes, bonus depreciation is mandatory for qualified property unless the taxpayer chooses to elect out for any class of property by filing a statement. The regulations to section 168(k) provide that the election not to deduct additional first year depreciation must be made by the due date, including extensions, of the federal tax return for the taxable year in which the taxpayer places the property in service.

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Once made, generally the election may be revoked only with the written consent of the Commissioner of Internal Revenue. On December 18, 2015, Congress enacted the PATH Act (P.L. 114-113), which, among other things, amended section 168(k) of the Internal Revenue Code by extending the placed-in-service date for property to qualify for the 50-percent bonus depreciation.

Prior to amendment by the PATH Act, section 168(k) allowed a 50-percent additional first year depreciation deduction for qualified property acquired by a taxpayer after 2007 and placed in service by the taxpayer before 2015 (or before 2016, in the case of longer production period property and aircraft described in section 168(k)(2)(B) and (C)).

The PATH Act amends section 168(k) by extending the placed-in-service date to before January 1, 2020 (before January 1, 2021, in the case of property described in section 168(k)(2)(B) and (C)). In addition, the Act extends bonus depreciation under a phase-down schedule through 2019:

- ▶ At 50 percent for 2015-2017;
- ▶ At 40 percent in 2018; and
- ▶ At 30 percent in 2019.

Many fiscal year taxpayers with a taxable year beginning in 2014 and ending in 2015 filed their 2014 federal tax returns prior to the enactment of the PATH Act and without the knowledge that bonus depreciation would be available in 2015. Similarly, taxpayers with a taxable year of less than 12 months beginning and ending in 2015 also filed the tax returns for the short year before the PATH Act was enacted. Consequently, these taxpayers did not claim bonus depreciation for qualified property placed in service in 2015 or affirmatively elect out of bonus depreciation for such property. The Service is aware that such taxpayers may be uncertain about whether 50-percent bonus depreciation would be available for 2015. As a result, the Service issued Rev. Proc. 2016-48 to provide the procedures for claiming, or not claiming, the 50-percent bonus depreciation for such property.

### ***Options to Claim Missed Bonus Depreciation***

#### **No Election Out of Bonus Depreciation Made by Taxpayer**

Rev. Proc. 2016-48 applies, in part, to a taxpayer that did not claim the 50-percent additional first year depreciation for some or all qualified property placed in service by the taxpayer after December 31, 2014, on its federal tax return for its taxable year beginning in 2014 and ending in 2015 (2014 taxable year) or its taxable year of less than 12 months beginning and ending in 2015 (2015 short taxable year).

A taxpayer that did not affirmatively elect out of bonus depreciation on its timely filed 2014 taxable year return or its 2015 short taxable year return and did not claim the bonus depreciation may claim the 50-percent bonus depreciation by filing either:

- 1) An amended federal tax return for the 2014 taxable year return or the 2015 short taxable year return, as applicable, before the taxpayer files the tax return for the immediately succeeding taxable year; or
- 2) A Form 3115, *Application for Change in Accounting Method*, under section 6.01 of Rev. Proc. 2016-29 (automatic change #7), with the taxpayer's timely filed (including extensions) federal tax return for the first or second tax year following the 2014 taxable year or the 2015 short taxable year, as applicable. The taxpayer must own the property subject to the method change request as of the first day of the year of change. An automatic Form 3115 must be attached to the timely filed (including extensions) federal tax return for the year of change and a copy of the Form 3115 must be mailed to the IRS office in Covington, Kentucky on or before the filing date of that return.

In order to claim any missed bonus depreciation on 2015 qualified property, affected taxpayers should carefully consider the options outlined in Rev. Proc. 2016-48 and take the appropriate corrective action.

### Election Out of Bonus Depreciation Made by Taxpayer

A taxpayer that made an affirmative election out of bonus depreciation on its timely filed return for the 2014 taxable year or the 2015 short taxable year, as applicable, for a class of property that is qualified property, may revoke that election under the relief provision of Rev. Proc. 2016-48. To revoke the election, the taxpayer must file an amended federal tax return for the 2014 taxable year or the 2015 short taxable year, as applicable, in a manner that is consistent with the revocation of the election and by the later of:

- 1) November 11, 2016; or
- 2) Before the taxpayer files its federal tax return for the first taxable year succeeding the 2014 taxable year or the 2015 short taxable year.

Lastly, to the extent that the taxpayer made the affirmative election on its timely filed return for the 2014 taxable year or the 2015 short taxable year as applicable for qualified property, and does not revoke that election within the time and manner described above, that election will be respected by the Service.

### Other Depreciation-Related Items

In addition to the bonus depreciation guidance addressed above, Rev. Proc. 2016-48 provides guidance for issues related to two other depreciation-related sections affected by the PATH Act. The PATH Act amended section 179(f) by extending the application of that section from any taxable year beginning after 2009 and before 2015 to any taxable year beginning after 2009 and before 2016. Furthermore, the PATH Act amended section 168(k)(4) by allowing corporations to elect not to claim the 50-percent bonus depreciation for certain property placed in service generally after December 31, 2014, and before January 1, 2016, and instead to increase their AMT credit limitation under section 53(c). Rev. Proc. 2016-48 sets forth procedures for affected taxpayers who wish to take advantage of these extensions.

Rev. Proc. 2016-48 is effective as of August 26, 2016.

## BDO INSIGHTS

- ▶ In order to claim any missed bonus depreciation, affected taxpayers should carefully consider the options outlined in Rev. Proc. 2016-48 and take the appropriate corrective action. To the extent that no affirmative election out of bonus depreciation was made on the timely filed 2014 taxable year return or the 2015 short taxable year return, a taxpayer can choose to either amend that return or file a Form 3115, but must be mindful of the limited time period to take advantage of these options.
- ▶ The Accounting Methods group within BDO USA's National Tax Office has extensive experience assisting taxpayers of all industries and sizes with their accounting method issues and filing accounting method change requests with the Service.

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