IRS Nationwide Tax Forum | 2018

Tax Reform Highlights for Small Businesses and Pass-Through Entities

New Rules for Depreciation

For *section 179 property* placed in service in taxable years beginning after Dec. 31, 2017:

- Section 179 deduction maximum increased from \$500,000 to \$1 million
- Phase-out threshold increased from \$2 million to \$2.5 million
- Definition of section 179 property expanded to include certain improvements made to nonresidential real property after the date the property was first placed in service

New Rules for Depreciation

For *qualified property* acquired and placed in service after Sept. 27, 2017:

- Increase in bonus depreciation from 50 percent to 100 percent, if placed in service before Jan. 1, 2023
- 100 percent is phased down by 20 percent per calendar year for property placed in service after 2022
- Definition of qualified property expanded to include qualified film, television or live theatrical productions

New Rules for Depreciation

For *used qualified property* acquired and placed in service after Sept. 27, 2017, 100 percent bonus depreciation may be taken if all of the following factors apply:

- the taxpayer didn't use the property at any time before acquiring it
- the taxpayer didn't acquire the property from a related party

And…

New Rules for Depreciation

- the taxpayer didn’t acquire the property from a component member of a controlled group of corporations
- the taxpayer’s basis of the used property is not figured in whole or in part by reference to the adjusted basis of the property in the hands of the seller or transferor
- the taxpayer’s basis is not figured under the provision for deciding basis of property acquired from a decedent

New Rules for Depreciation

For property placed in service after Dec. 31, 2017:

- Luxury automobiles limits changed – see Pub 946
- Farm machinery and equipment (some exclusions) recovery period reduced from 7 to 5 years, if original use by the taxpayer occurs after Dec. 31, 2017
- Computers and peripheral equipment are no longer considered “listed property”

Modifications of Treatment of Certain Farm Property

150% declining balance depreciation

- No longer required for 3, 5, 7 and 10 year farm property
- Continues to apply for 15 or 20 year farm property

Applies to farming property placed in service after Dec. 31, 2017, in taxable years ending after this date

Time Limit for Contesting Levies

- Extended from 9 months to 2 years if the IRS has levied upon money or sold levied property
- New 2-year period covers both administrative claims and civil suits
- Applies to levies made after Dec. 22, 2017 and on or before that date, if the previous nine-month period hadn't yet expired
- No time limit to file a claim if the IRS still has the tangible levied property

Time Limit for Contesting Levies

If, following a claim, the IRS decides to return levied property, it will:

- return the property,
- return any money levied upon, or
- return any money received from the sale of the property

Immediately contact the IRS if a Final Notice of Intent to Levy and Notice of Your Right to A Hearing is received

Like-Kind Exchanges

- Section 1031 now applies only to exchanges of real property used in a trade or business or held for investment
- Does not apply if the real property is held primarily for sale
- Section 1031 applies to certain exchanges of personal or intangible property completed before Jan. 1, 2018
- Also applies to certain exchanges of personal or intangible property if the taxpayer disposed of the exchanged property on or before Dec. 31, 2017, or received replacement property on or before that date

Like-Kind Exchanges

- Properties are of like-kind if they are of the same nature or character

- Real property is generally of like-kind to other real property, although domestic real property is not of like-kind to foreign real property

Qualified Business Income

- Deduction for Qualified Business Income (QBI)
- QBI means, for any taxable year, the net amount of qualified items of income, gain, deduction, and loss with respect to any domestic qualified trade or business of the taxpayer
- All taxpayers, except C corporations, with QBI from a qualified trade or business may take this deduction
- Taxpayers may claim the deduction in addition to the standard or itemized deduction

Qualified Business Income

Qualified trade or business is any U.S. trade or business, with two exceptions:

- specified service trade or business, and
- the trade or business of being an employee

Qualified Business Income

A specified service trade or business is any trade or business described in section 1202(e)(3)(A) (with certain modifications)

- That is, any trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners.

Qualified Business Income

A specified service trade or business is also any trade or business:

- Which involves the performance of services that consist of investing and investment management, trading, or dealing in securities, partnership interests, or commodities.

Qualified Business Income

- The specified service exclusion does not apply to taxpayers whose taxable income is less than $157,500 ($315,000 married filing jointly (MFJ)).
- The deduction is reduced for taxpayers in a specified service trade or business whose taxable income is between $157,500 and $207,500 ($315,000 and $415,000 MFJ).
- Income from a specified service trade or business is not income from a qualified trade or business for taxpayers with taxable income above $207,500 ($415,000 MFJ).

Qualified Business Income

- If taxable income is below $157,500 ($315,000 married filing jointly) regardless of the type of qualified trade or business, deduction is the lesser of:
  - 20% of qualified trade or business income, plus 20% of qualified Real Estate Investment Trust (REIT) dividends and qualified publicly traded partnership (PTP) income, or
  - 20% of the excess of taxable income over net capital gain

Qualified Business Income

For taxpayers with taxable income of $157,500 or more ($315,000 married filing jointly (MFJ)), the amount determined for QBI is limited to the greater of:

- 50% of wages from the qualified trade or business, or
- 25% of wages plus 2.5% of the unadjusted basis of qualified property from the qualified trade or business

These limitations are phased in for taxpayers with taxable income between $157,500 and $207,500 ($315,000 and $415,000 MFJ).

Qualified Business Income

- Special rules for cooperatives – agricultural and horticultural cooperatives are allowed a deduction for domestic production activities

- IRS is working on issuing additional guidance

Gift and Estate Tax Exclusion Amount

- The basic exclusion amount for gifts and estates was increased from $5 million to $10 million
- Adjusted for inflation, the basic exclusion amount for 2018 is $11,180,000
- The increased basic exclusion amount expires Dec. 31, 2025

Questions?

Resources

- IRS.gov/TaxReform