

IRS Allows Amended Partnership Returns for Bonus Depreciation and Other CARES Act Changes

by Christopher A. Karachale &
Nancy E. Dollar



On April 8, 2020, the IRS released [Rev. Proc. 2020-23](#) to allow certain partnerships to take advantage of tax law changes under the [Coronavirus Aid, Relief and Economic Security \(CARES\) Act](#), including the immediate expensing of costs related to "qualified improvement property." Prior to the IRS guidance, procedural rules could prevent a partnership from filing an amended return to claim favorable tax attributes in 2018 and 2019, including bonus depreciation for qualified improvement property.

[The CARES Act included a technical correction](#) for the drafting error in the Tax Cuts and Jobs Act (TCJA), known as the "retail glitch." Congress planned for 100% bonus depreciation to apply to qualified improvement property, meaning improvements to "an interior portion of a building which is nonresidential real property," provided the improvement occurred after the building was placed in service. However, the final text of the TCJA did not reflect the legislative intent.

Instead, qualified improvement property was treated as 39-year property ineligible for bonus depreciation after December 31, 2017. The IRS and Treasury Department determined that a technical correction was necessary and issued regulations that disallowed bonus depreciation to qualified improvement property, notwithstanding the clear Congressional intent reflected in the [Blue Book](#) and related legislative history to the TCJA. The modification in the CARES Act fixed the retail glitch and allows qualified improvement property to be eligible for 100% bonus depreciation retroactively to January 1, 2018.

In addition to the technical correction for qualified improvement property, the CARES Act changed TCJA amendments related to claiming net operating losses, minimum tax credits, and business interest deductions. Taxpayers may consider taking advantage of planning opportunities under the CARES Act by amending prior year returns or filing an automatic [Form 3115: Application for Change in Accounting Method](#), if applicable.

By issuing Rev. Proc. 2020-23, the IRS offers filing relief for partnerships to amend tax returns for 2018 and 2019 in light of the retroactive changes under the CARES Act. Absent the relief, IRS procedures disallowed most partnerships from amending the prior years for an immediate tax benefit, including bonus

depreciation for qualified improvement property. Given the replacement of the TEFRA rules with the new Centralized Partnership Audit Regime under the Bipartisan Budget Act of 2015, a partnership would have to submit an administrative adjustment request (AAR) to report any changes to a previously filed return. The partners would generally reflect the tax impact of these changes in the year the AAR is filed, rather than in the year adjusted. Allowing for amended partnership returns in 2018 and 2019 provides significant relief for partnerships generally and potentially grants taxpayers refunds under the CARES Act provisions much sooner.

Partnerships that have filed [Form 1065](#) and furnished all Schedules K-1 prior to April 8, 2020 for tax years beginning in 2018 or 2019 are now eligible to file amended returns for those years. The amended returns may take into account the new CARES Act provisions, as well as any other tax attributes available to the partnership. Eligible partnerships must file the 2018 or 2019 amended returns and furnish the corresponding Schedules K-1 by September 30, 2020.

For further information on tax law changes in the CARES Act, please contact the [Hanson Bridgett Tax Group](#).

For more information, please contact:

Christopher A. Karachale, Partner
415-995-5863
ckarachale@hansonbridgett.com

Nancy E. Dollar, Associate
415-995-5092
NDollar@hansonbridgett.com