Lowndes

Made Any Improvements to Your Non-Residential Building Lately? CARES Act May Provide You a Big Benefit

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The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which was signed into law last week, contains an important fix to the 2017 Tax Cuts and Jobs Act that could provide a real financial benefit to non-residential real property owners.

The Tax Cuts and Jobs Act provided for 100% bonus depreciation of real property if it had a recovery period of 20 years or less. It was intended that this would include qualified improvement property, which is any improvement to an interior portion of a non-residential building if the improvement is made after the property was placed in service. Excluded from qualified improvement property are improvements attributable to (1) enlargement of the building, (2) any elevator or escalator, or (3) the internal structural framework of the building.

Unfortunately, while the legislative history made clear that amounts paid for qualified improvements were to qualify for 100% bonus depreciation (i.e., a full write-off in the year the improvement was made), there was a technical glitch and the statute classified qualified improvement property as having a 39-year recovery period. As a result, bonus depreciation was unavailable. The CARES Act has finally fixed this glitch by providing that all qualified improvement property has a 15-year recovery period, and thus qualifies for 100% bonus deprecation. This change applies retroactively as if it had always been part of the Tax Cuts and Jobs Act.

What does this mean for businesses that made improvements to their real property? They should look at the extent to which they made any qualified improvements since September 27, 2017, and, to the extent they did, they should consider filing amended tax returns for the years in which those improvements were made. The ability to claim 100% bonus depreciation for these improvements could result in a significant tax refund check.

Industries such as retail and hospitality could benefit the most from this tax fix and should reach out to their tax advisors about this change.