OBBBA OFFERS IMPORTANT INCENTIVE TO ENCOURAGE MANUFACTURING, PRODUCTION, AND REFINING IN THE UNITED STATES

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> "Special deduction allowance for qualified production property" significantly decreases the present value of capital expenditure investment in facilities and reduces barriers to entry for inbound investment.

A new super depreciation deduction for qualified production facilities in the One Big Beautiful Bill Act (OBBBA)[1] could provide a significant incentive to locate certain manufacturing, production, and refining operations in the United States. The provision would benefit qualifying nonresidential real property located in the United States, as well as possessions, including inbound investments. In some cases, the deduction would offset the cost of tariffs on imported machinery and equipment, mitigating tariff impacts.

Section 70307 of OBBBA, "Special Depreciation Allowance for Qualified Production Property," adds new Code Section 168(n), allowing the cost of a production, manufacturing, or refining facility to be deducted in the year placed in service. Normally, such a facility would be depreciable over a period of 39 years. Only the cost attributable to the portion of the facility that is integral to the qualified production activity is fully deductible. Other parts of the facility that house nonmanufacturing, production, or refining activities, including office space, research space, etc., are subject to regular depreciation rules.

Qualified production activity is defined to mean the manufacturing, production, or refining of a qualified product. For this purpose, "production activity" is limited to agriculture and chemical production. Manufacturing and refining activity are not specifically defined but appear intended to be broad in scope as long as they produce a "qualified product," which is any tangible personal property (other than a narrow exception for food produced and sold on-site, as in a restaurant). Substantial transformation of the property comprising the product is required, similar to a requirement to qualify for the Section 45X Advanced Manufacturing Production Tax Credit.

Construction on the facility must begin after 19 January 2025 and before 1 January 2029. The facility must be placed in service before 1 January 2031. Although the general rule is that original use of the facility must begin with the taxpayer, in certain circumstances acquisition of a used facility during the construction period is eligible, but the facility cannot have been previously used for qualified production activity nor used by the taxpayer prior to the acquisition. In cases where an "act of God" delays the placed-in-service date, an extension may be allowed.

The taxpayer must elect to claim the special deduction. There may be situations where this is not as advantageous as it might seem. For example, if a business has large losses, the deduction may not be helpful.

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Or, if the business is subject to the corporate alternative minimum tax and the regular effective tax rate falls below 15% because of this super deduction, it may not provide much benefit. Taxpayers should thoroughly consider whether the deduction is beneficial before making the election, which is revokable only in extraordinary circumstances by the Secretary of the Treasury.

Questions regarding the implementation of the deduction are expected to be addressed in forthcoming guidance. The US Department of the Treasury (Treasury) has included Section 168(n) on its 2025-2026 priority guidance plan.[2] The priority guidance plan identifies tax issues to be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance in the coming year. As Treasury sorts through these consequential decisions, taxpayers should consider engaging with Treasury to identify questions and provide comments to help shape guidance so the requirements to claim the deduction are clear.

Please contact any of the authors of this article for further information regarding this potentially powerful deduction and how to submit comments.

FOOTNOTES

[1] Pub. L. No. 119-21 § 70307, Special Depreciation Allowance for Qualified Production Property (2025), *available at* https://www.congress.gov/bill/119th-congress/house-bill/1/text.

[2] 2025-2026 Priority Guidance Plan, U.S. Treasury Department (Sept. 30, 2025) *available at* https://www.irs.gov/privacy-disclosure/priority-guidance-plan.

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