



## **TECHNICAL CHANGES TO TAX REFORM**

### **ISSUE BACKGROUND**

In December, Congress passed a comprehensive tax reform bill known as the “Tax Cuts and Jobs Act.” The bill represented the biggest rewrite of the tax code in three decades. The bill included a 21 percent corporate tax rate, a 37 percent top individual tax rate, a repeal of the corporate alternative minimum tax, a 20 percent deduction on pass-through income (trusts and estates are now entitled to use the pass-through deduction), a State and Local tax deduction expansion beyond just property taxes that include income tax and are capped at \$10,000, and a doubling of the estate tax exemption, although it was not fully repealed. Most of the rates will sunset in 2025 except for the corporate tax rate. The bill preserved the step-up in basis on property transferred during an estate settlement which was great news for petroleum marketers. Due to the detrimental effects it would have on businesses, PMAA opposed any attempt to repeal the step-up in basis.

Additionally, the bill preserved the inventory accounting method, last in, first out (LIFO), which was also great news for marketers. LIFO considers the costs of replacing inventory, thereby, giving a more accurate measure of the financial condition of the business and the economic income to which tax should apply. Repealing LIFO would have forced PMAA member companies currently using this method to report their LIFO reserves as income, resulting in a massive tax increase for small business petroleum marketers across the country. The bill also preserved Section 1031 exchanges of like-kind property. Without the tax-deferral benefit that Section 1031 exchanges provides; small and medium sized businesses would not be as equipped to reinvest in their businesses and real estate values would decline. Finally, the bill also opened the Arctic National Wildlife Refuge (ANWR) to oil and gas drilling and directed the Energy Department to sell as much as 7 million barrels of crude oil from the Strategic Petroleum Reserve.

### **BONUS DEPRECIATION DRAFTING ERROR**

The new tax law contains a provision in Section 168 that provides retailers with the benefit of 100 percent bonus depreciation for qualified improvement property acquired and placed into service after September 27, 2017. However, an error occurred when the final text was drafted that makes retailers ineligible for this benefit.

#### ***How Did the Drafting Error Occur?***

Section 168 of the old tax law had three individual categories of qualified improvement property: leasehold improvement property, retail improvement property, and restaurant improvement property. Each category had a 15-year Modified Accelerated Cost Recovery System (MACRS) recovery period, meaning property could depreciate over the course of 15 years.

To simplify the tax code, tax writers combined the three above categories into one category called “qualified improvement property” in the new bill and meant to designate it with a 15-year recovery period. The intent to designate this 15-year recovery period was explicitly stated in the conference agreement. However, when the final bill was written, the 15-year recovery period was accidentally omitted from the text by tax writers, and the recovery period then defaulted to 39 years. This omission is a serious mistake because to benefit from 100% bonus depreciation, there must be a MACRS recovery period of 20 years or less.

#### ***What Does the Drafting Error Mean for convenience store owners?***

Without the inclusion of the 15-year recovery period:

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- Recovery period increases from 15 years to 39 years
- Retailers no longer qualify for bonus depreciation
- In the old law, retailers qualified for 50 percent bonus depreciation."

PMAA has been urging Congress to fix the drafting error because if they don't, retailers will not only be ineligible for the 100 percent bonus depreciation benefit, but they will also no longer be eligible for any bonus depreciation. Unfortunately, the omnibus spending bill passed by Congress in March did not include a provision to correct the drafting error. PMAA is encouraging Congress to fix the error as quickly as possible.

**“THE ASK”**

PMAA urges Congress to quickly fix the drafting error in Section 168 of the “Tax Cuts and Jobs Act” so businesses can receive the 100 percent bonus depreciation benefit that Congress intended to provide in the bill.

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