



1700 NORTH MOORE STREET  
SUITE 2250  
ARLINGTON, VA 22209  
T (703) 841-2300 F (703) 841-1184  
WWW.RILA.ORG

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BY FACSIMILE  
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Hon. Michael F. Mundaca  
Assistant Secretary (Tax Policy)  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

Hon. William J. Wilkins  
Chief Counsel  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Room 3026  
Washington, DC 20224

RE: Guidance addressing application of the  
100-percent bonus depreciation incentive

Dear Assistant Secretary Mundaca and Chief Counsel Wilkins:

On behalf of the Retail Industry Leaders Association (RILA), I write to request guidance on the application of the 100-percent bonus depreciation incentive enacted in Section 401 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRJCA)<sup>1</sup> to certain leasehold-improvement property. As this new incentive generally applies only to property placed in service between September 9, 2010 and December 31, 2011, we ask for your immediate attention with respect to this guidance.

RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

The new 100-percent depreciation incentive was intended to have broad application and clearly applies under Section 168(k)(5) of the Internal Revenue Code<sup>2</sup> to property that constitutes qualified leasehold improvement property (QLIP) as defined in Code Section 168(e)(6). It is

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<sup>1</sup> Pub. L. No. 111-312 (Dec. 18, 2010).

<sup>2</sup> Unless otherwise noted, all references are to the Internal Revenue Code of 1986, as amended (the Code).

unclear, however, how the incentive applies to property that qualifies as both QLIP and qualified retail improvement property (QRIP), as defined in Code Section 168(e)(8).<sup>3</sup> Since the addition of the latter property classification in 2008, QRIP has not qualified for applicable bonus depreciation.<sup>4</sup> Nevertheless, Congress intended that property constituting both QLIP and QRIP should qualify for 50-percent bonus depreciation under Code Section 168(k)(2), which was available with respect to property placed in service in 2009 and 2010.<sup>5</sup> We find no indication that Congress intended a contrary result with the expansion of bonus depreciation in TRUIRJCA. Thus, we believe that the leasehold character of property that constitutes both QLIP and QRIP should prevail and allow it to qualify for 100-percent bonus depreciation, and we ask that you issue guidance clarifying that position.

The allowance of 100-percent depreciation was clearly intended to encourage business investment and help stimulate job creation and economic growth, which has struggled to take a firm hold in recent months. With only a limited window of opportunity for the 100-percent bonus depreciation incentive, RILA members are working quickly to assess how this incentive can be applied effectively in their businesses, and ambiguities like the dual QLIP-QRIP property issue outlined above only hinder that process and threaten the efficacy of the depreciation incentive. Accordingly, we urge the Treasury Department and the Internal Revenue Service to move quickly on guidance that will allow broad application of this depreciation incentive and maximize its economic potential.

At the same time, we ask that you consider a legislative proposal that would remove the exclusion of QRIP, as well as QRP, from qualifying for 100-percent bonus depreciation and the 50-percent bonus depreciation applicable to property placed in service in 2012 (or 2013, as applicable). Removing these barriers would further expand the economic potential of these depreciation incentives.

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<sup>3</sup> A similar ambiguity exists with respect to or qualified restaurant property (QRP), as defined under Code Section 168(e)(7).

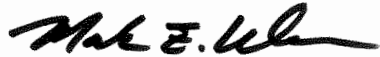
<sup>4</sup> See Section 168(e)(8)(D), as enacted by Section 305(c)(2) of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (Pub. L. No. 110-343 (Oct. 4, 2008)). Similarly, Code Section 168(e)(7)(B) excludes QRP from bonus depreciation.

<sup>5</sup> See Joint Committee on Taxation, "Technical Explanation of H.R. 4213, the "Tax Extenders Act Of 2009," as Introduced in the House Of Representatives on December 7, 2009," JCX-60-09 (Dec. 8, 2009) at 29 n. 16 ("Property that satisfies the definition of both qualified leasehold improvement property and qualified retail property is eligible for bonus depreciation.").

Hon. Michael F. Mundaca  
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February 9, 2011  
Page 3

Thank you in advance for your consideration of these requests. We would be happy to provide further information to assist in the issuance of this guidance and welcome any questions in this regard. Please contact me at [mark.warren@rila.org](mailto:mark.warren@rila.org) or (703) 841-2300 if I can be of assistance.

Sincerely,



Mark E. Warren  
Vice President, Tax & Finance

cc: Mr. Jeff Van Hove  
Tax Legislative Counsel  
U.S. Department of the Treasury

Mr. Brandon Carlton  
Attorney Advisor  
U.S. Department of Treasury

Mr. George Blaine  
Associate Chief Counsel  
Income Tax & Accounting  
Internal Revenue Service

Ms. Kathy Reed  
Branch Chief, Branch 7  
Income Tax & Accounting  
Internal Revenue Service