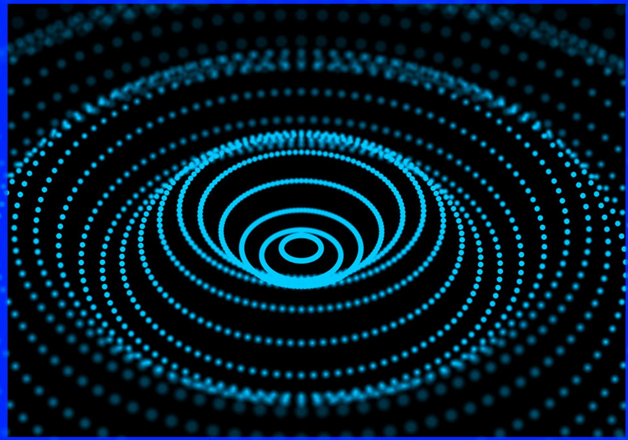
Expensing opportunities for qualified sound recording productions in 2025 and beyond



On July 4, 2025, the president signed into law Pub. L. No 119-21, commonly known as the One Big Beautiful Bill Act (OB3), which adds a new category of assets, known as "qualified sound recording productions" (QSRs), generally eligible for elective upfront expensing under Section 181 for a limited time and permanent 100% bonus depreciation once placed in service. Additionally, the OB3 reinstates and modifies certain provisions that previously phased out or expired from the Tax Cut & Jobs Act (TCJA), including:

- Permanent reinstatement of 100% bonus depreciation under Section 168(k)
- Permanent reinstatement of EBITDA when determining adjusted taxable income (ATI) for purposes of the interest expense limitation under Section 163(j)

Similar to the addition of qualified film, television, and live theatrical productions to bonus depreciation by TCJA, the new treatment afforded the costs of producing QSRs will have a significant impact to both film and television producers, as well as music and podcast companies, producing sound recordings in the US.

What is a qualified sound recording production?

Under new Section 181(f), "qualified sound recording productions" must be produced and recorded in the US, and are defined as they are under US copyright law, i.e., generally as works that result from the fixation of a series of sounds (whether musical, spoken, or other sounds), regardless of the nature of the material objects in which they are embodied, but not including the sounds accompanying a motion picture or other audiovisual work. Section 168(k) relies on this definition in determining a QSR's eligibility for bonus depreciation (i.e., with respect to capitalized production costs in excess of the amount expensed under Section 181) when placed in service (i.e., at the time of initial release or broadcast).

The addition of QSRs as a new category of productions eligible for the accelerated recovery of production costs brings clarity to the recovery period for costs to produce spoken-word recordings such as podcasts, which had not been defined in prior law.[1] Taxpayers had taken differing views on how to determine the useful life of the recordings and whether an income forecast method may be used to recover these production costs. While Section 181 limits expensing to $150,000 of the costs of producing QSRs commencing in tax years ending after July 4, 2025 and before 2026, the addition of QSRs as a class of property eligible for 100% bonus depreciation now permanently provides for consistent treatment of QSRs with qualified film, television, and live theatrical productions under Section 168(k).

[1] Note that smaller producers or companies that meet the exception for certain small businesses under section 448(c) (i.e., those whose prior three-year-average annual gross receipts do not exceed $31 million for tax years beginning in 2025) are not required to capitalize such costs under Section 263A (see Section 263A(i)).

It is common in certain industries for copyrights and repertoire ownership to be owned in a decentralized structure. Therefore, companies may make payments for assets sitting outside of the US. Taxpayers should be wary that in order for assets to be "qualified" for purposes of both Sections 181 and 168(k), they must be produced within the US and be defined under US copyright laws.

Limited-time opportunity under Section 181

As noted above, under Section 181, creators and producers of QSRs commencing in tax years ending after July 4, 2025 and before 2026 can now elect to deduct up to $150,000 of otherwise capitalizable production costs incurred during the year (rather than capitalizing and recovering them over time once placed in service). The availability of this election enables these projects to take advantage of immediate expensing (of up to $150,000), thereby improving cash flow and making it more financially feasible for creators to produce new content. However, while OB3 expands Section 181 to include QSRs, it does not extend the provision, which currently expires for productions commencing after 2025. This creates a limited-time opportunity to take advantage of expensing certain costs of producing QSRs before initial release or broadcast. Section 181 also favorably allows for the election to be made on a production-by-production basis (on a timely filed return), enabling modeling opportunities depending on a producer's taxable income position for 2025.

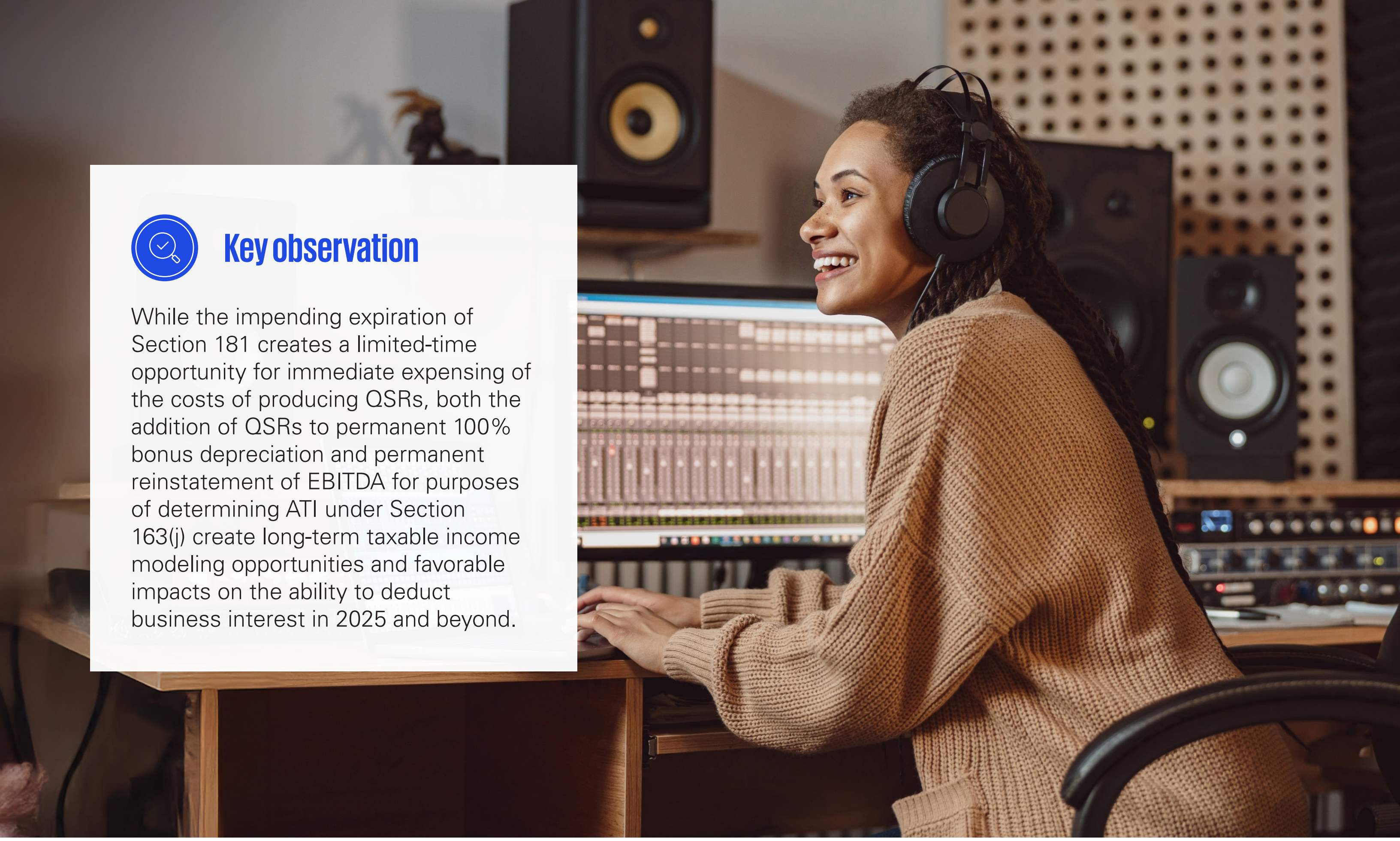
Permanent opportunities under Section 168(k)

Furthermore, QSRs are considered a new category of qualified property under Section 168(k) eligible for bonus depreciation. For taxpayers who are limited by the $150,000 cap for QSRs under Section 181, the ability to claim bonus depreciation under Section 168(k) provides an additional tax benefit for the excess production costs of QSRs commencing in tax years ending after July 4, 2025 that are placed in service after January 19, 2025. While Section 181 allows for the immediate expensing of otherwise capitalizable production costs of such QSRs for up to $150,000, Section 168(k) offers the opportunity to further reduce taxable income by allowing for a 100% depreciation deduction for the excess production costs at the time of initial release or broadcast of the QSR. This can be particularly advantageous for larger projects where production costs exceed the limits set by Section 181 and for all projects commencing after 2025 when Section 181 will no longer be available (i.e., eligibility under Section 168(k) is determined without regard to the dollar limitation or termination date of Section 181). Similar to the election under Section 181, producers can determine whether to claim or elect out of bonus depreciation for QSRs on a production-by-production basis, enabling additional modeling opportunities in determining taxable income.

Interactions with Section 163(j)

Section 163(j) generally limits the deduction for business interest expense to 30% of the sum of adjusted taxable income (ATI), business interest income, and floor plan financing interest.[2] After the enactment of the OB3, ATI is again calculated in a manner similar to earnings before interest, taxes, depreciation, and amortization (generally referred to as "EBITDA") for tax years beginning after 2024 (i.e., consistent with its application for tax years beginning before 2022). Hence, ATI is now calculated without regard to the allowance for depreciation, amortization, or depletion (i.e., such amounts are added back to taxable income in determining the Section 163(j) limitation). As a result, the production costs of QSRs—whether expensed (under Section 181 or 168(k)) or amortized over time (generally under the income forecast method of Section 167)—are treated as "depreciation or amortization" in the tax year the deductions are taken for purposes of calculating ATI under Section 163(j). See Section 163(j)(8)(v), as amended by the OB3; Section 1245(a)(2)(C); and Treas. Reg. §1.163(j)-1(b)(1)(i)(D) and (E). As a result, while the new bill provides valuable upfront tax benefits for sound recording investments, media businesses should be aware of the favorable interaction of these deductions with the Section 163(j) interest expense limitation in tax years beginning after 2024.

[2] Note that smaller producers or companies that meet the exception for certain small businesses under section 448(c) (i.e., those whose prior three-year average annual gross receipts do not exceed $31 million for tax years beginning in 2025) are not subject to the interest expense limitation of Section 163(j) (see Section 163(j)(3)).



Key observation

While the impending expiration of Section 181 creates a limited-time opportunity for immediate expensing of the costs of producing QSRs, both the addition of QSRs to permanent 100% bonus depreciation and permanent reinstatement of EBITDA for purposes of determining ATI under Section 163(j) create long-term taxable income modeling opportunities and favorable impacts on the ability to deduct business interest in 2025 and beyond.

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