

Factory Building Expensing as a Domestic Production Incentive Raises Questions

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Reprinted from *Tax Notes Federal*, May 12, 2025, p. 1073

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In this article, the authors consider a potential domestic manufacturing incentive provision in the upcoming tax bill that would allow for full expensing of manufacturing facilities, and they point out that several questions remain open about how the provision would be implemented.

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This article discusses the potential for Congress to create an incentive entitling taxpayers to expense the cost of buildings placed in service and used in certain manufacturing activities, and offers considerations for policymakers looking to incentivize investment in the United States.

In a recent press briefing, Treasury Secretary Scott Bessent noted that an impending tax bill could include a provision allowing full expensing of “factory structures” — presumably manufacturing facilities — in an effort to encourage domestic manufacturing.¹ This comment comes after President Trump, in an address to Congress this spring, called for both an extension of 100 percent expensing and a reduction in the federal corporate tax rate from 21

percent to 15 percent for companies manufacturing their products in the United States.² Trump made similar remarks throughout his presidential campaign.³

Policymakers likely have many issues to address if they are considering providing full expensing for manufacturing facilities; most importantly, how will a “factory structure” (that is, manufacturing facility) be defined, and how will this benefit be coordinated with a potential domestic manufacturing rate reduction provision? Since taxpayers in many industries will presumably be eager to be included in any manufacturing facility incentive, the specifics of such a proposal are important to consider.

Qualified Property

The proposal teased by Bessent would likely coordinate with the anticipated extension of 100 percent bonus depreciation for qualified property enacted by the Tax Cuts and Jobs Act.⁴ Under section 168(k), taxpayers may generally write off a specified percentage of the cost of qualified property for tax purposes (commonly referred to as “bonus depreciation”). The TCJA originally provided for a bonus depreciation percentage of 100 percent, with a phasedown of 20 percent per year, generally beginning in 2023.⁵

Qualified property under present law already includes depreciable business assets with a recovery period of 20 years or less (for example,

²The White House, “Remarks by President Trump in Joint Address to Congress” (Mar. 4, 2025).

³See Alexander Rifaat, “Trump Calls for Repeal of CHIPS Act, Retroactive Full Expensing,” *Tax Notes Federal*, Mar. 10, 2025, p. 1888.

⁴P.L. 115-97 (Dec. 22, 2017), 131 Stat. 2054 (commonly referred to as the TCJA).

⁵See section 168(k)(6) (the applicable bonus depreciation percentage for property placed in service during 2025 is generally 40 percent).

¹See Cady Stanton, “GOP Targeting July 4 Deadline for Tax Package, Bessent Says,” *Tax Notes Federal*, May 5, 2025, p. 933.

machinery, equipment, computers, appliances, furniture, etc.) and certain other property (for example, computer software).⁶ Property eligible for bonus depreciation also currently includes certain building property with a 15-year recovery period — generally interior improvements made to nonresidential real property that are placed in service after the initial placed-in-service date of the realty (that is, improvements or modifications to existing structures to allow for new or expanded manufacturing activities).⁷ Similarly, certain nonresidential real property used in designated manufacturing activities has a 15-year recovery period, making it eligible for bonus depreciation under present law.⁸

The potential incentive, therefore, would presumably create a new category of qualified property benefiting taxpayers placing in service nonresidential real property used in qualifying activities that is currently subject to a depreciable life of 39 years.

The effective date of such a proposal would be key. Taxpayers will want to understand if the potential incentive would apply for construction that commences or structures that are acquired after the date of enactment (or some other date, such as January 20, 2025, or date of introduction), as well as to any manufacturing facilities placed in service after the date of enactment (or some other date, such as January 20, 2025, or date of introduction). If the proposal is effective for manufacturing facilities constructed or acquired after a certain date, taxpayers may not see tax benefits from the proposal for many years after enactment, when construction is complete and the property is placed in service. If only a placed-in-service date applies, any manufacturers who are currently increasing their domestic investments would likely be able to benefit from the proposal (such as taxpayers in the semiconductor industry that have already commenced construction on U.S. manufacturing facilities).

Qualified Activities

If bonus depreciation is extended to manufacturing facilities placed in service in the United States, policymakers will need to define the activities for which the facilities must be used to be eligible for the incentive. It is unclear if the proposal would apply solely to taxpayers placing in service buildings to produce tangible goods or if domestic investment in property constructed for industries that were previously considered “manufacturing” under former section 199 would also benefit from the potential expansion.

Production activities for previous domestic manufacturing incentives, notably former section 199, included software development;⁹ production of electricity, natural gas, or potable water; production of films or sound recordings; construction of real property; or engineering or architectural services related to the construction of real property. Although taxpayers in these industries might not immediately come to mind when contemplating construction of manufacturing facilities, the inclusion of such activities could be viewed as consistent with the administration’s policy aims.

Further, while it is currently unclear whether taxpayers in the technology sector would be included in a rule permitting expensing of manufacturing facilities, the Republican Party platform has previously indicated an intent to lead the world in artificial intelligence innovation.¹⁰ Permitting taxpayers that construct AI data centers to qualify for the incentive would align with an intention to foster advances in AI and encourage investment in future jobs.¹¹

⁹ See, e.g., Jessica Theilken, Monisha Santamaria, and Natalie Tucker, “Any Domestic Manufacturing Incentive Will Need Updated Definitions,” *Tax Notes Federal*, May 5, 2025, p. 845.

¹⁰ See, e.g., “2024 GOP Platform Make America Great Again!” Road to 47: The Trump-Vance Transition Newsletter, July 8, 2024.

¹¹ Investments in the data center industry are projected to reach \$1 trillion by 2027. See “Data Centers at the Crossroads of Technology and Resilience,” PwC US, Feb. 25, 2025. In addition, the global data center construction market is expected to reach \$416.4 billion by 2032. See “Data Center Construction Market,” Allied Market Research, June 2024. See also Andrew Foote and Caelan Wilkie-Rogers, “Data Centers Growing Fast and Reshaping Local Economies” (Jan. 6, 2025) (“Employment in U.S. data centers — facilities that house the computer systems that store and manage data — increased more than 60 percent nationally from 2016 to 2023.”).

⁶ See section 168(k)(2).

⁷ See section 168(e)(6).

⁸ See, e.g., asset class 00.4 of Rev. Proc. 87-56, 1987-42 IRB 4.

Additional Questions Loom

Questions may also arise concerning how a potential provision to expense manufacturing facilities would interact with a potential provision reducing the corporate tax rate for manufacturers. Many taxpayers are likely eagerly awaiting confirmation that both provisions will go into effect for taxpayers that conduct production activities in the United States.

No certainty about the operation of any proposed domestic manufacturing incentives will come until the House Ways and Means Committee chair's mark of the tax title of the reconciliation bill is released.¹² Even then, it is likely that questions will remain on such an incentive (or incentives) until a final bill is passed by both the House and the Senate. Because of the potential for changes as the bill moves through Congress, taxpayers should carefully consider and model how the contours of these proposed domestic manufacturing incentives would affect them and share ideas for potential modifications with policymakers. ■

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¹² See Concurrent Resolution on the Budget for Fiscal Year 2025, H. Con. Res. 14 (119th Cong., 1st Sess.).