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Revenue Procedure 2026-17: IRS Offers Key Relief for Prior Interest Limitation and Depreciation Elections

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The IRS has issued Revenue Procedure 2026-17, responding to significant statutory changes enacted under the One, Big, Beautiful Bill Act (OBBBA).¹ Those changes include the restoration of the earnings before interest, taxes, depreciation, and amortization (EBITDA) approach to computing adjusted taxable income (ATI). This means that, beginning in 2025, taxpayers can add back depreciation, amortization, and depletion when computing their ATI for purposes of the section 163(j) business interest expense limitation. Additionally, the OBBBA reinstated and made permanent the 100% bonus depreciation. The new guidance offers taxpayers a chance to use the benefit of hindsight to calculate the tax benefits of the law change. This relief is important for many taxpayers, as it offers a limited window to unwind prior irrevocable elections and reassess tax strategies that were made before the law fundamentally changed.

Background: The Impact of the OBBBA

Under prior and present law, an election under section 163(j)(7)² allows certain real property, farming, and regulated utility trades or businesses to opt out of the annual business interest expense limitation. However, making this election comes at a cost: the business is required to use the slower alternative depreciation system (ADS) for certain types of depreciable property and is precluded from claiming bonus depreciation on such property. The OBBBA's recent changes restoring the depreciation add-back to ATI and making 100% bonus depreciation permanent have altered the cost-benefit analysis of section 163(j) and 168 elections.

Crucially, a section 163(j)(7) election, once made, is generally irrevocable, locking taxpayers into their decision. Revenue Procedure 2026-17 is the IRS's response to the OBBBA changes to section 163(j), offering taxpayers a narrow opportunity to revisit a statutory framework that has now been completely changed. Taxpayers are given the ability to use hindsight to help leverage the tax benefits of the law change.

¹ Pub. L. No. 119-21, 139 Stat. 190 (July 4, 2025).

² Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended (the "Code") or the applicable regulations promulgated pursuant to the Code (the "regulations").

Key Relief Provisions

The revenue procedure provides three options described below to help maximize the benefit of the reversion to an EBITDA approach to calculating ATI.

- **Withdrawal of Section 163(j)(7) Elections (2022–2024)**

Taxpayers that elected to be treated as an electing real property trade or business, electing farming business, or excepted regulated utility trade or business (a 163(j)(7) election) for tax years beginning in 2022, 2023, or 2024 may withdraw those elections through amended returns. If withdrawn, the taxpayer is treated as though the election had never been made, restoring full application of section 163(j) but allowing depreciation under the general MACRS rules rather than ADS.

- **Late Election Out of Bonus Depreciation**

A taxpayer withdrawing a section 163(j)(7) election may also make a late election under section 168(k)(7) to opt out of bonus depreciation for one or more classes of property impacted by the withdrawn section 163(j)(7) election. This election is intended to allow impacted taxpayers to recalibrate depreciation and section 163(j) profiles in light of the now permanent 100% bonus depreciation regime.

- **CFC Group Election Flexibility**

Multinational groups are given a one-time opportunity to make or revoke a CFC group election for the first specified period beginning after December 31, 2024, without regard to the usual 60-month waiting period. This relief is prospective only but provides meaningful flexibility in light of changes introduced by the OBBBA.

How to Claim Relief: Amended Returns Required; Modified Guidance Suggested

While Revenue Procedure 2026-17 offers meaningful flexibility, it does not permit any of the election withdrawals or late elections to be implemented through a current year accounting method change. Although section 163(j) is fundamentally a timing provision due to the indefinite carryover of disallowed business interest expense, it is not considered an accounting method subject to procedures in section 446(e). This means that a taxpayer desiring to apply the revenue procedure must amend one or more of its prior-year tax returns. Unfortunately, Revenue Procedure 2026-17 does not extend the statute of limitations on the ability to amend. The government should consider revising the guidance to avoid the inequity of some taxpayers having statutes close, and the administrative burdens of amending returns that would cause many taxpayers to forego the relief. Such a revision could permit taxpayers to treat the depreciation aspects to be adjusted through an accounting method change and the section 163(j) aspects through a cumulative catch-up adjustment, both in the current year.³

In this regard, the procedures in Revenue Procedure 2026-17 stand in contrast to Revenue Procedure 2020-25, issued during COVID-19, where the IRS expressly allowed certain late depreciation and section 163(j) elections and/or revocations to be implemented through automatic accounting method changes with current year section 481(a) adjustments in light of the administrative burdens amending returns places on taxpayers.

³ If the government had taken this approach, it would presumably not apply the reasoning in CCA 202123007 to require taxpayers to treat the positive section 481(a) adjustment from the depreciation change as negative depreciation for ATI because taxpayers would not have taken the earlier depreciation as a favorable ATI adjustment due to the exemption from section 163(j) as well as the inability to adjust ATI for depreciation during the 2022, 2023, and 2024 years.

Unless and until any such modified guidance is issued, a taxpayer that wishes to use Revenue Procedure 2026-17 must amend its originally filed return for the original election year (so long as the original election year is 2022 or later) and may only do so if that year is still open under the statute of limitations.

Taxpayers that choose to withdraw a section 163(j)(7) election must include all collateral adjustments to taxable income or to tax liability, including modifications to any existing adjustments under section 481, in the amended return or administrative adjustment request (AAR) for the original election year and any succeeding years. The revenue procedure provides as an example of such collateral adjustments, the amount of depreciation allowed or allowable in the applicable tax year for the property to which the withdrawn section 163(j)(7) election applies.

BBA Partnership Considerations

BBA partnerships may file an AAR. BBA partnerships satisfying the requirements of section 7 of the revenue procedure may opt to file an amended Form 1065 and furnish amended Schedules K-1 instead of filing an AAR to take into account tax changes provided by the revenue procedure as well as any other tax attributes to which the partnership is entitled by law.

To be eligible to avail itself of the amended return procedure under the revenue procedure, a BBA partnership must have filed Forms 1065 and furnished Schedules K-1 for the partnership tax years beginning in 2022, 2023, or 2024 prior to the issuance of the revenue procedure. Upper-tier BBA partnerships that receive an amended Schedule K-1 furnished under the revenue procedure may also file an amended Form 1065 to take the adjustments into account as long as they also meet the requirements under the revenue procedure.

Eligible BBA partnerships must, in addition to meeting the other requirements in Revenue Procedure 2026-17, file an amended Form 1065 with the “Amended Return” box checked and writing clearly at the top, “FILED PURSUANT TO REV. PROC. 2026-17,” attach a statement with each Schedule K-1 sent to its partners with the same notation, and furnish corresponding amended Schedules K-1 by the deadlines provided in the revenue procedure. The regular AAR rules do not apply to the amended return, including the filing deadlines under the AAR rules.⁴ The amended return may be filed electronically or in paper, but the revenue procedure notes that filing electronically will allow for faster processing of the amended Form 1065. Special rules apply to BBA partnerships that are under exam for 2022, 2023 or 2024 tax years or that have previously filed an AAR.

Window for Planning & Action

For capital-intensive businesses, the ability to restore faster depreciation while reassessing exposure to section 163(j) can result in both meaningful cash-tax implications and permanent benefits. Not only may affected taxpayers obtain favorable ATI adjustments for the bonus depreciation on current depreciable property additions, but they also have the ability to gain additional depreciation from prior-year additions that were saved for these post-2024 years by making the retroactive election out of bonus for those prior years. At the same time, however, the IRS has opted for technical precision over administrative ease by limiting relief to amended-return or AAR procedures, as applicable.

Taxpayers that made a section 163(j)(7) election in 2022, 2023, or 2024 will benefit from modeling the impact of withdrawing those elections under current law. Affected taxpayers should evaluate the effort required to prepare amended returns, including assessing statute-of-limitations constraints.

⁴ The revenue procedure appears to be internally inconsistent on this point. Whereas the revenue procedure states the rules of section 6227(c) (the time period for filing an AAR) do not apply to an amended return filed under the revenue procedure, the revenue procedure also states that an amended return must be filed within the AAR period. A conservative reading of the revenue procedure would call for filing the amended return within the three-year AAR period to allow the amended return to be considered timely.

For partnerships, consideration should be given to the potential impact of the revocation of a section 163(j)(7) election on direct or indirect partners who may have relied on the partnership's section 163(j)(7) election to compute the amount of the partner's own business interest expense that is subject to limitation. Partnerships should also consider whether the ability to amend a partnership return in order to revoke the section 163(j) election may be an opportunity to review and change other aspects of the partnership return in connection with the amendment, rather than undertaking the more burdensome AAR procedures, using a mechanism that is more familiar than the new AAR procedure and potentially resulting in partners taking adjustments into account sooner, rather than in the tax return for the reporting year. Generally, a partnership's filing of an amended return does not extend the statute of limitations on assessment. In contrast, an AAR has the effect of re-starting the statute of limitations for adjusting a BBA partnership return. Consequently, the ability to amend the partnership return rather than needing to file an AAR to make a desired adjustment presents a potential advantage with respect to the statute of limitations.

Notably, the deadline to file an amended return or AAR in order to withdraw or make a late election under Revenue Procedure 2026-17 is the earlier of October 15, 2026, or the taxpayer's normal statute of limitations, which makes timely analysis important. This timely analysis is especially important in the event that a partnership has BBA partnership partners that will receive an amended Schedule K-1 and that might also wish to avail themselves of the amended return procedure under the revenue procedure. If a partnership-partner (that is a BBA partnership) is not eligible to file an amended return under the revenue procedure upon receiving an amended Schedule K-1, it would seemingly need to file an AAR to take the adjustments from an amended Schedule K-1 into account. Note that, even though generally there is no duty to amend a return, a partner of a BBA partnership that receives an amended Schedule K-1 from that BBA partnership, because the BBA partnership filed an amended return under the revenue procedure, may be subject to a math error assessment due to inconsistent treatment if that partner does not, itself, file an amended return.

A Tale of Two Taxpayers: No Relief for Some

While the guidance provides welcome relief for some, its narrow scope creates a significant disappointment for taxpayers who chose a different path under the prior law. Before the OBBBA, the landscape for capital-intensive taxpayers was dictated by their eligibility to be treated as a real property, farming, or regulated utility business:

1. **Eligible Taxpayers** faced a strategic choice: make the section 163(j)(7) election to avoid the interest expense limitation at the cost of slower ADS depreciation and forgoing bonus depreciation on certain property.
2. **Ineligible Taxpayers**—representing a vast number of businesses in sectors like manufacturing, technology, and retail—had no choice at all. Their only path was to remain subject to the section 163(j) limitation and choose whether or not to claim bonus depreciation.

The new guidance offers a “do-over” only to the first group, offering no recourse to ineligible businesses that had no option to elect out of section 163(j) at the expense of foregoing bonus depreciation. These taxpayers are now locked into their prior depreciation positions, even though the fundamental economics of that decision have been completely altered by the OBBBA. This results in an inequitable outcome.

The disparity is stark. A taxpayer who made the election now gets a double benefit: they can withdraw the section 163(j)(7) election to switch from ADS to the more favorable MACRS rules for impacted property, and then they can also make a late election to opt out of bonus depreciation on those same assets in order to further benefit from the EBITDA approach in post-2024 years. This allows such taxpayers to align their depreciation deductions to potentially maximize their ATI in tax years starting after December 31, 2024. In contrast, a taxpayer who originally claimed bonus depreciation is given no corresponding ability to elect out of it, despite the fact that the add-back for such depreciation was not allowed in calculating the ATI limitation during 2022 through 2024. Similarly, taxpayers who made the section 163(j)(7) election prior to 2022 are unable to take advantage of the relief. This denies a large number of taxpayers the flexibility to realign their strategy with the new tax landscape,

despite the fact that both eligible and ineligible taxpayers made (or failed to make) certain elections based on an understanding that ATI would no longer be increased by depreciation.

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