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Alert: A Massive New FinCEN Filing Requirement Is Coming

The Corporate Transparency Act (CTA) is a new law passed in 2021 that requires corporations, LLCs, and other business entities to provide information about their owners to the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

The CTA did not take effect immediately. Rather, Congress gave the FinCEN time to write regulations and also gave businesses a heads-up about the new law.

FinCEN has now issued proposed regulations on how it intends to implement the CTA. The new proposed regulations hold several unpleasant surprises for businesses and the lawyers and accounting firms that advise them.

What the CTA Is About

The CTA is part of a major government effort to crack down on corruption, money laundering, terrorist financing, tax fraud, and other illicit activity. The CTA targets the use of anonymous shell companies that facilitate the flow and sheltering of illicit money in the United States.

Currently, few states require corporations, LLCs, or other entities to disclose information about their beneficial owners—that is, the human beings who actually own or control them—or the people who form them. And there has never been a federal requirement to do so. As a result, anonymous shell companies abound, and it can be impossible for law enforcement to discover who really owns them.

This will soon change. The CTA empowers FinCEN to establish a massive database containing beneficial owner information for most types of smaller business entities. These include U.S.-based businesses and foreign entities that register to do business in the U.S. The database will not be publicly accessible; it is solely for the use of law enforcement, national security and intelligence agencies, and federal regulators enforcing anti-money-laundering laws.

The CTA focuses on smaller business entities, since they are most likely to be shell companies. The law contains 23 exemptions for most types of larger businesses. These include publicly traded corporations and other businesses that are heavily regulated by the federal government.¹ Also exempt is any business that²

- has more than 20 full-time employees (employees who work 30 hours per week or 130 hours per month),
- has a physical presence at a business office in the United States, and

- has filed a federal tax or information return the prior year showing more than \$5 million in gross receipts or sales (net of returns and allowances, and not counting foreign sales).

Violations of the CTA can result in a \$500-a-day penalty (up to \$10,000) and up to two years' imprisonment.³

Surprise #1: The CTA Is Not Just for Corporations and LLCs

The CTA mandatory reporting requirements apply to corporations and limited liability companies. This includes the almost 2.5 million LLCs that have only one member and are taxed as Schedule C sole proprietorships ("disregarded entities").

But the CTA doesn't end there. It also applies to any other non-exempt entity that is created by filing a document with a state secretary of state or similar state agency.⁴ FinCEN says that this includes limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships because such entities are normally created by a filing with a secretary of state.⁵

In short, almost every small business that is not a sole proprietorship or general partnership will have to comply with the CTA.

How many businesses are we talking about? FinCEN estimates as many as 30 million!

Surprise #2: The CTA May Take Effect Sooner than Anticipated

It's likely that the regulations will become final sometime in the second half of 2022. The final date will trigger the deadline for complying with the CTA's reporting requirements.

The CTA applies to both newly formed entities and existing companies. The deadline for compliance differs for each.

Key point. The deadlines do not coincide with the deadlines for filing tax returns.

New companies. Once the proposed regulations become final, new companies have to file their beneficial owner reports within 14 calendar days after being formed.⁶ Thus, if you're forming a new corporation, LLC, limited partnership, or other entity during the second half of 2022 that requires a filing with your secretary of state, you'll likely have to file a report with FinCEN.

Existing companies. The proposed regulations require existing companies to file a report no later than one year after the effective date of the final regulations.⁷ This is so even though the CTA itself provides that existing companies have two years to comply after the regulations become final.⁸ So existing companies will have to file their initial reports by mid- to late 2023.

Of course, it's possible that FinCEN will delay the final date of the regulations to 2023 or even later if it becomes clear no one is ready for them to go into effect during 2022.

Surprise #3: Beneficial Owners Are Broadly Defined

The CTA requires affected business entities to file a “beneficial owner information” report including each beneficial owner’s full legal name, date of birth, and residential street address, as well as a unique identifying number from an acceptable legal document such as a driver’s license or passport.⁹ The proposed regulations make it clear that a company can have multiple beneficial owners, and it may not always be easy to identify them all.

There are two broad categories of beneficial owners:¹⁰

1. Any individual who owns 25 percent or more of the company.
2. Any individual who, directly or indirectly, exercises substantial control over the company.

The CTA didn’t define “substantial control.” The proposed regulations define it quite broadly, to include¹¹

- senior officers of the company;
- individuals who have authority over appointment or removal of any senior officer, or of a majority of the company’s board of directors; and
- individuals who have substantial influence over important matters affecting the reporting company, including major expenditures, investments, or borrowing; sale or other transfer of assets; selling, dissolving, or reorganizing the company; selecting or terminating business lines or ventures; entering into or terminating significant contracts; compensation for senior officers; or amending the company’s governing documents.

Moreover, a person’s substantial control need not be exercised directly. It can be indirectly exercised through a variety of means.

Surprise #4: Tight Deadline for Updated Beneficial Owner Reports

If changes occur in the information included in a beneficial owner information report, the proposed regulations require that an updated report be filed with FinCEN within 30 calendar days after the change.¹²

For example, if a beneficial owner moves, an updated report will have to be filed within 30 days. FinCEN estimates that about 9 percent of all beneficial owners will have a change of address each year requiring an updated report. Updated reports also will have to be filed when a beneficial owner dies.

FinCEN estimates that over 11.4 million updated reports will have to be filed each year.

Surprise #5: The Report Must Identify Those Who Help Form Corporations and LLCs

In addition to the company's beneficial owners, the "company applicant" will have to be identified in the beneficial owner information report. This is "any individual who files the document that creates the domestic reporting company" or directs or controls others to do so.¹³ This would appear to include an attorney who files articles of incorporation to create a corporation or articles of formation to establish an LLC.

Neither the CTA nor proposed regulations contain any exemption for legal or accounting firms, except for public accounting firms registered under Section 102 of the Sarbanes-Oxley Act of 2002.¹⁴ According to FinCEN, only 851 accounting firms are so registered.

Get Ready—It's Coming

Whether it starts in late 2022 or 2023, a massive new filing requirement is coming for small businesses.

The FinCEN estimates that during the first year the CTA is in effect, over 25.8 million reports will have to be filed at a cost of \$1.264 billion. In subsequent years, over 3.2 million initial reports and 11.4 million updated reports will have to be filed, at a total annual cost of over \$364 million.

If you're a beneficial owner of a company subject to the CTA (in other words, a reporting company), you should provide your identifying information to the company so it can file the beneficial owner report.

Instead of providing your information directly to the company, you'll have the option of applying to FinCEN for a FinCEN identifier and using that instead. You'll have to provide FinCEN with all the required information, and it will assign you a unique number to give to the reporting company. You'll need to keep this information up-to-date with FinCEN.

Reporting companies should identify every individual who meets the definition of "beneficial owner" and inform them of the need to provide the required information or obtain a FinCEN identifier.

Takeaways

Here are five things to know from this article:

1. FinCEN has issued proposed regulations showing how it intends to implement the CTA—a law enacted in 2021 requiring smaller businesses to disclose the names, addresses, and other identifying information of their beneficial owners for inclusion in a FinCEN database that will be accessible only to law enforcement.
2. The CTA will take effect when the proposed regulations become final, which may be as early as mid-2022.

3. After the CTA takes effect, all new smaller businesses will have to file a beneficial owner report with FinCEN within 14 days of formation. All existing smaller businesses will have to file a report within one year.
4. Beneficial owners will include individuals who own 25 percent of a business entity, and all those who exercise substantial control over it.
5. Beneficial owner reports will have to be updated within 30 days if there is a change in the reported information, including a change in an owner's address.

¹ Prop. Reg. Section 31 CFR 1010.380(c)(2)(i)-(xx).

² Prop. Reg. Section 31 CFR 1010.380(c)(2)(xxi).

³ 31 U.S.C. Section 5336(h).

⁴ Prop. Reg. Section 31 CFR 1010.380(c)(1)(i)(C).

⁵ FinCEN, Fact Sheet: Beneficial Ownership Information Reporting Notice of Proposed Rulemaking (NPRM), (Dec. 7, 2021).

⁶ Prop. Reg. Section 31 CFR 1010.380(a)(1)(i).

⁷ Prop. Reg. Section 31 CFR 1010.380(a)(1)(iii).

⁸ 31 U.S.C. Section 5336(b)(1)(B).

⁹ 31 U.S.C. Section 5336(b)(2)(A).

¹⁰ Prop. Reg. Section 31 CFR 1010.380(d).

¹¹ Prop. Reg. Section 31 CFR 1010.380(d)(1).

¹² Prop. Reg. Section 31 CFR 1010.380(a)(2).

¹³ Prop. Reg. Sections 31 CFR 1010.380(b)(1)(ii); 31 CFR 1010.380(e).

¹⁴ Prop. Reg. Section 31 CFR 1010.380(c)(2)(xv).

\$80 Billion to the IRS: What It Means for You

For the business owner and tax practitioner, the most important part of the Inflation Reduction Act of 2022 was not the tax credit for flashy new electric cars.

It was something much more basic: a long-term budget commitment to help the struggling, failing IRS.

The Inflation Reduction Act invests an additional \$80 billion in the IRS over the next 10 years. This is the biggest budget increase the IRS has ever received. To put this in perspective, it is almost six times the IRS's annual \$13.8 billion budget.

Some politicians have raised the specter of 87,000 new gun-toting revenue agents scouring the land, looking for tax evaders. This is patently ridiculous.

But the new funding will impact all taxpayers. The average taxpayer should benefit because the IRS will be able to upgrade its operations and improve its woeful levels of service.

On the other hand, the well-above-average taxpayer should look out: the bulked-up IRS will be gunning for you.

How Will the IRS Use the Additional Money?

The new IRS funding will be appropriated as follows:¹

- \$3,181,500,000 for taxpayer services
- \$45,637,400,000 for enforcement
- \$25,326,400,000 for operations support
- \$4,750,700,000 for business systems modernization

The appropriated funds will remain available until September 30, 2031.

This is a mandatory appropriation. This means that Congress can't reduce the appropriation without passing a new law to do so.

There are no limits on how much the IRS can spend in any given year. The Biden administration plans to have the IRS phase in the new spending by implementing no more than \$1.5 billion the first year and gradually building up to \$15 billion by year 10.² The IRS is going to issue a detailed spending plan within six months.

Note that \$35 billion of the new money is not for enforcement. Among other things, the IRS plans to use these funds to update its antiquated IT systems (some of which date back to the 1960s), improve phone service, and speed up the processing of paper tax returns.

Taxpayers should see improvements in IRS services relatively soon. Over the next six months the IRS plans to hire 5,000 additional phone representatives, fully staff every IRS Tax Assistance Center, and improve the processing of paper returns by implementing scanning technology.

How Much Will the IRS Grow?

The IRS budget fell by 18.5 percent over the past decade, leading to a 20 percent decline in the agency's workforce. As of 2021, the IRS had only 78,661 employees. By comparison, it had 90,290 employees in 2012 and 116,673 in 1992. Staff losses have been most significant for revenue officers, who collect taxes (a 50 percent decline to 8,200), and revenue agents, who audit complex returns (a 35 percent decline).

Today, the IRS has fewer auditors than at any time since World War II.³

The IRS will be adding new employees, but not anywhere close to the 87,000 number bandied about in the media. Much of the new hiring will just offset attrition. The IRS has an aged workforce and expects a whopping 35,000 employees to retire in the next six years, along with another 17,000 who'll leave before retirement. That's 52,000 employees who'll need to be replaced.⁴

Thus, the IRS needs to hire 8,600 new employees per year just to stay even over the next six years. If all goes well, at the end of 10 years the IRS may grow by 20,000 to 30,000 employees, but it will still be smaller than it was in 1992. But the number of revenue agents could increase to 17,000 by 2031—over twice as many as today.

Will Audits Increase?

In a word: yes. Treasury Secretary Yellen has promised that IRS audit rates will remain at “historical levels” for taxpayers earning less than \$400,000 per year.⁵ “Historical levels” is an ambiguous term. Does it encompass the audit levels of the past decade or so?

In 2010, audit rates were at 1 percent compared with the current historic lows of about 0.25 percent. Thus, audits for those earning less than \$400,000 could increase fourfold, albeit from a very low level.

In any event, audit rates will definitely rise for taxpayers earning more than \$400,000 per year. This may take some time. The investment in the IRS is expected to raise some \$124 billion over the next 10 years.

Planning for the Restored IRS of the Future

If you earn \$400,000 or more, your chances of being audited over the next five or 10 years will likely go up, perhaps substantially.

You should keep complete and accurate records and file timely and complete tax returns. (Of course, this is something you should do anyway.)

Here are a few special areas of concern.

Cryptocurrency

The first page of the draft Form 1040 for 2022 asks the following revised cryptocurrency question: “At any time during 2022, did you (a) receive (as a reward, award, or compensation); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)?”

When the IRS places a question about an asset on the first page of Form 1040, you know it’s a high-priority item. You can expect increased IRS audits dealing with cryptocurrency transactions.

If you’re one of the millions of Americans who engage in such transactions, it’s important to keep good records and report any income you earn.

S Corporation Compensation

If you’re an S corporation shareholder-employee, you’re likely saving on employment taxes by characterizing part of your compensation as a corporate cash distribution rather than employee wages or bonus. The smaller your salary, the more Social Security and Medicare tax you save.

You’re supposed to pay yourself a reasonable employee salary. If the IRS concludes part of your distribution is really a disguised salary payment, it can recharacterize it as salary and retroactively impose employment taxes, penalties, and interest.

For over 20 years, the IRS has been officially concerned with S corporations paying their shareholder-employees unreasonably low salaries. In the past, it threatened to increase audits of S corporations. But, doubtless due to budget constraints, it never really happened. In 2018, the audit rates for S corporations were a minuscule 0.65 percent.

This time it could be different. If the beefed-up IRS starts looking for low-hanging audit fruit to pick, S corporation salaries would be a likely choice.

You should have your S corporation pay you an arguably reasonable salary and benefits, and document how you arrived at the amount.

Syndicated Conservation Easements

One hot-button item for the IRS right now is syndicated conservation easements. Even in its currently reduced state, the IRS has been fighting them tooth and nail. They are listed as one of the IRS's dirty dozen tax scams for 2022.⁶

These are real estate partnerships that acquire land and donate the development rights to a qualified organization. The investors in the partnerships then obtain a charitable deduction for the value of the easement. The promoters of some of these deals have used wildly inflated appraisals to increase their tax benefits.

Some investors have claimed charitable deductions four times the amount of their investment. The IRS says that it examines 100 percent of these deals and plans to continue doing so for the foreseeable future.

Note that there are other ways to benefit from a conservation easement. For example, you could donate, to a qualified organization, development rights to a parcel of land that you own.

Offshore Accounts

U.S. citizens and residents are taxable on their worldwide income and are required to report foreign bank accounts to the U.S. Treasury. Concealing assets in offshore accounts is another item on the IRS's list of dirty dozen tax scams.

If you have more than \$10,000 in one or more offshore accounts, you must file a Report of Foreign Bank and Financial Account (FBAR) each year. Failure to do so can result in substantial penalties: \$100,000 or 50 percent of the total balance of the account per violation.

In recent years, the IRS has gone after both banks and bank account holders who hide assets in offshore accounts. In future years, we can expect the IRS to place even greater emphasis on identifying and tracking such offshore assets.

Business Partnerships

Partnerships and multi-member LLCs taxed as partnerships (which describes most of them) can expect increased scrutiny from the IRS in the future.

Currently, partnerships are hardly ever audited. The partnership audit rate has been about 0.4 percent to 0.5 percent for many years.

The IRS's latest five-year strategic plan calls for an increased focus on business partnerships that make up a disproportionate share of unpaid taxes.

The IRS began this process in late 2021 when it launched the Large Partnership Compliance (LPC) program, using data analytics to select 2019-tax-year large partnership returns for audit. You can expect the IRS to devote more resources to this program in the future.

Takeaways

The Inflation Reduction Act gives the IRS an additional \$80 billion to spend over the next 10 years. Some \$35 billion will be used to upgrade IRS operations, and \$45 billion is earmarked for enforcement.

The IRS may grow by 20,000 to 30,000 employees by 2032, and the number of revenue officers who collect unpaid taxes could more than double.

The IRS promises that audits of taxpayers earning less than \$400,000 per year will remain at historical levels. But this could mean they increase by as much 400 percent over their current low levels.

Taxpayers who earn more than \$400,000 will be in the IRS's crosshairs in future years. Areas it is likely to focus on include cryptocurrency, S corporation compensation, offshore accounts, syndicated conservation easements, and business partnerships.

¹ Pub. L. No. 117-169 (08/16/2022).

² U.S. Department of the Treasury, "The American Families Plan Tax Compliance Agenda," p. 16 (2021).

³ *Ibid.*, p. 11.

⁴ IRS Commissioner Rettig written testimony before the House Ways and Means oversight subcommittee (Mar. 17, 2020), p. 3.

⁵ Remarks by Secretary of the Treasury Janet L. Yellen (Sept. 15, 2022).

⁶ IR-2022-125.

New Law Improves Energy Tax Benefits for Biz Owners and Landlords

The newly enacted Inflation Reduction Act contains tax credits and depreciation benefits for owners of commercial property and residential rental property.

If you implement various types of renewable energy improvements, you can qualify for hefty tax credits or deductions.

One caution: the rules are complex. That said, bear with the rules because the benefits are worthwhile.

Business Energy Investment Tax Credit

The business energy investment tax credit (ITC) is used primarily for solar panel installations on commercial buildings and residential rentals.

The ITC has been available and continues for small wind power installations, fuel cells, microturbine, waste energy recovery, geothermal, and combined heat and power. The new law extends the ITC to stand-alone battery storage, biogas (such as landfill gas), and microgrid controllers.¹

The new law retroactively increases the base ITC from 26 percent to 30 percent of depreciable basis for projects that are placed in service after 2021, provided that construction commences before 2025.² To realize the full tax credit, you must continue to own the property for five years after the energy installation, or the government will recapture some or all of the credit.³

Special Rule for Larger Energy Projects

To obtain the 30 percent ITC, larger energy projects must comply with new prevailing wage and apprenticeship requirements.⁴ These apply only to energy facilities with a maximum net output of at least one megawatt.

Key point. Typical solar or other alternative energy projects for commercial buildings and residential rentals don't produce this much power. For example, a solar installation for a large warehouse typically produces no more than 100 kilowatts to 400 kilowatts—less than half of one megawatt.

If the wage and apprenticeship rules do apply, failure to comply reduces the ITC from 30 percent to 6 percent.⁵

Increasing the ITC to 40 Percent, 50 Percent, or More

Starting in 2023 (in other words, coming soon), businesses can also utilize stackable “bonus” ITC adders that can increase the total ITC to a whopping 40 percent, 50 percent, or more.

- **Domestic content bonus.** You can earn a 10 percent ITC bonus (bringing the ITC to 40 percent) if a project satisfies the domestic content requirement. (100 percent of the steel and iron used must be U.S.-sourced. Manufactured components must be at least 40 percent U.S.-sourced.) But the Treasury secretary can provide exceptions to these rules if they result in cost increases of over 25 percent or if comparable products are not readily available in the U.S.⁶
- **Low-income community bonus.** You earn a 10 percent ITC bonus if a solar or wind facility is located in, or services, a low-income community or Native American land. Low-income communities are those with at least a 20 percent poverty rate or whose residents earn less than 80 percent of the statewide median income.⁷
- **Qualified low-income residential building project bonus.** You earn a 20 percent ITC bonus for solar or wind installations for residential buildings if (a) the building owner participates in various federal low-income housing programs, or (b) 50 percent of the affected building households have income of less than 200 percent of the federal poverty line or less than 80 percent of the area’s median gross income.⁸
- **Energy community bonus.** You can earn a 10 percent ITC bonus if the project is located in or on (a) a brownfield site, (b) an area with significant employment related to fossil fuels, or (c) a coal-related census tract.⁹

Special depreciation benefit. The year you place your solar or other energy installation in service, you may depreciate it. Ordinarily, you reduce the basis of depreciable property by the full amount of any credit. But the ITC reduces the energy property’s basis by only half the credit amount, increasing your depreciation deductions.¹⁰

Five-year depreciation. IRC Section 48 energy property gets a five-year depreciation period under MACRS (this is generous because solar panels usually last 25 to 30 years).¹¹

Bonus depreciation. Here’s more good news. The 80 percent first-year bonus depreciation is available for energy improvements for residential rental or commercial property placed in service during 2023; the depreciation is 60 percent for 2024.

Example. Sally owns a small commercial building in downtown Detroit. She spends \$50,000 to install solar panels in 2023. The project qualifies for the 10 percent domestic content bonus and the 10 percent low-income community bonus.

- Sally’s total ITC is 50 percent. She gets a \$25,000 ITC.
- The depreciable basis in her building is reduced by only 50 percent of her ITC, so her basis is \$37,500. She uses 80 percent bonus depreciation to deduct \$30,000 in 2023.
- She depreciates her remaining \$7,500 basis over five years.

Can't Use the ITC? Sell It

The ITC is non-refundable, but it is transferable. That is, you may transfer all or part of your ITC to another taxpayer for cash.

The buyer of your ITC need not be a business or be involved in the renewable energy industry (but the person or entity may not be related to you).

The buyer must pay you for the ITC in cash. You are not taxed on the payment. It's tax-exempt income for you.

The credit must be transferred by the due date of the tax return for the taxable year in which the credit is determined. A credit may be transferred only once.¹²

Replacement

The ITC in its current form expires in 2024. It will be replaced with a new, technology-neutral clean electricity ITC.

Under the new credit, any project producing electricity will qualify for a 30 percent clean energy ITC if its greenhouse gas emissions rate is not greater than zero. The clean energy ITC will phase out by the later of¹³

- 2032, or
- when the electric power sector emits 75 percent less carbon than 2022 levels.

Energy-Efficient Commercial Buildings Deduction

Since 2006, owners of commercial buildings have been able to claim an immediate first-year deduction for part of the cost of making existing or new buildings more energy-efficient. The Inflation Reduction Act significantly increases the amount of this deduction starting in 2023.

Note that this is simply an accelerated tax deduction, not a tax credit.

Other Choices

Building owners can deduct many of these same expenses in one year using Section 179 expensing without having to comply with the complex rules for the Section 179D deduction. But there is an annual limit on the Section 179 deduction (\$1,080,000 for 2022).

Bonus depreciation is also available to deduct many of these expenses in one year, but it will be reduced from 100 percent in 2022 to 80 percent in 2023 (and to 60 percent in 2024).

Commercial and Multi-Family

The Section 179D deduction is only for commercial buildings and multi-family residential buildings of four stories or more. It is not available for rentals of single-family homes, multi-family buildings of three stories or less, mobile homes, or manufactured homes.¹⁴

Building owners qualify for the deduction when, as part of a plan to reduce total energy costs, they upgrade a building's¹⁵

- interior lighting system;
- heating, cooling, ventilation, or hot water system; or
- building envelope—for example, roofs, walls, floors.

Old 50 Percent Rule

Under the old deduction, building owners had to improve a building's energy efficiency by 50 percent as compared with a hypothetical reference building that meets an efficiency engineering standard established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE Standard 90.1).

New, Easier 25 Percent Rule

Under the revised deduction, building owners only have to improve energy efficiency by a minimum of 25 percent.¹⁶ And the maximum deduction amount increases for every percentage point of energy efficiency above the 25 percent benchmark.¹⁷

Old Deduction

The old deduction was capped at \$1.88 per building square foot in 2022.

New Deduction

Starting in 2023, the deduction cap is increased to \$5 per building square foot (subject to annual inflation adjustments). But to claim the \$5-per-square-foot deduction, building owners must comply with prevailing wage and apprenticeship requirements. If those requirements are not met, a building owner may claim only a \$1-per-square-foot maximum deduction.¹⁸

Prevailing Wage Rules

The prevailing wage rules require that any laborers and mechanics employed by the taxpayer, contractors, and subcontractors be paid prevailing wages (as determined by the Department of Labor¹⁹) during installation, alteration, or repair of the project.

The apprenticeship rules require that qualified apprentices be hired to perform a minimum percentage of the work on the project, as follows:

- 10 percent in 2022
- 12.5 percent in 2023

- 15 percent in 2024 and later

Failure to satisfy these requirements can be cured by making payments to each worker previously paid below the prevailing wage and remitting penalty payments to the IRS.

The IRS will issue guidance on how these requirements will work in practice. Projects that begin construction within 60 days after the IRS publishes such guidance are not subject to the prevailing wage and apprenticeship requirements.²⁰

Inspection

To obtain the Section 179D deduction, the building must be inspected by a “qualified individual” who certifies to the IRS that you’ve complied with all the requirements.²¹ You’ll likely need to hire a heating and ventilating engineer, refrigeration engineer, illuminating engineer, or other similar expert to get this deduction. You should do this before undertaking an energy-efficiency retrofit project.

Defined Designers Can Claim the Deduction

One unique aspect of the Section 179D deduction is that designers of government buildings have been able to claim it.

The Inflation Reduction Act extends this deduction to designers of buildings for any tax-exempt entity, including Indian tribal governments, churches and other religious organizations, and not-for-profit schools and universities. The entity must allocate the deduction to the designer.²²

For these purposes, designers include architects, engineers, design-build contractors, and performance contractors.

Electric Vehicle Charger Credit

The Inflation Reduction Act extends through 2032 the tax credit for installing an electric vehicle charging station in a commercial or rental building garage or parking lot.²³

Prevailing Wage Rules Apply Here Too

Starting in 2023, the credit remains 30 percent of the cost of installing such chargers, but only if the project complies with prevailing wage and apprenticeship requirements (these are the same requirements discussed above).

If the project does not comply with these requirements, the law reduces the credit from 30 percent to 6 percent. The maximum annual credit is now capped at \$100,000, and the cap applies per charger unit.²⁴ Under prior law, there was a \$30,000 annual cap for an entire location regardless of the number of chargers.

More Chargers Qualify

The credit is also extended to include bi-directional chargers that can be used to power a home and feed energy back into the electricity grid.²⁵ The credit now also applies to chargers for two- and three-wheeled vehicles.²⁶

New Geographic Requirement

The electric charger credit is subject to a new geographic requirement that will greatly limit its availability. Starting in 2023, it will be available only for property located in low-income or rural areas.²⁷

Low-income census tract. The charging station must be located in a low-income census tract that has a poverty rate of at least 20 percent or a median family income of less than 80 percent of the statewide median.

Rural area. Alternatively, the charging station must be in a non-urban area. This is an area not designated as an urban area by the U.S. Commerce Department in the most recent census. Less than 20 percent of the U.S. population lives in such rural areas.²⁸

General Business Credit

The electric vehicle charger credit is part of the general business credit.²⁹ The basis of the property for which a credit is claimed must be reduced by the amount of the credit.³⁰

Takeaways

The Inflation Reduction Act extends and expands business ITCs for installing solar and other renewable energy facilities in commercial and rental buildings. The new law retroactively increases the ITC from 26 percent to 30 percent for projects begun after 2021 and before 2025.

Starting in 2023, you can earn bonus credits giving you 40 percent, 50 percent, or more in ITC. You earn the bonus credits for projects that

- comply with domestic content requirements,
- are located in low-income communities,
- participate in federal housing programs, or
- are located in communities involved with fossil fuels.

The ITC in its current form expires in 2025, to be replaced with a new technology-neutral, 30 percent clean electricity ITC.

The Energy Efficient Commercial Buildings Deduction can now be obtained for projects that increase a building's energy efficiency by 25 percent instead of 50 percent. Starting in 2023, the cap on the deduction is increased to \$5 per building square foot if prevailing wage and

apprenticeship requirements are met. If these requirements are not met, a building owner may claim only a \$1-per-square-foot maximum deduction.

The credit for installing electric vehicle charger units in commercial or rental buildings is extended to 2032. Starting in 2023, the following rules govern:

- The 30 percent credit is available only for projects that comply with prevailing wage and apprenticeship rules; otherwise, it is reduced to 6 percent.
- The credit is available only for property located in low-income or rural areas.
- The annual cap on the credit is increased to \$100,000 per charging unit.

¹ IRC Sections 48(a)(2)(A)(i)(VI); 48(a)(2)(A)(i)(IX); as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13102.

² IRC Sections 48(a)(2)(A); 48(a)(9); as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13102.

³ IRC Section 50(a)(1)(A).

⁴ IRC Sections 48(a)(10); 48(a)(11); as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13102.

⁵ IRC Section 48(a)(9)(B)(i), as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13102.

⁶ IRC Section 48(a)(12), as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13102.

⁷ IRC Section 48(e), as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13102.

⁸ Ibid.

⁹ IRC Sections 48(a)(14); 45(b)(11)(B), as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13102.

¹⁰ IRC Section 50(c)(3).

¹¹ IRC Section 168(e)(3)(B)(vi).

¹² IRC Section 6418, added by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13801.

¹³ IRC Section 48E, added by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13702.

¹⁴ IRC Section 179D(c)(1); IRS Notice 2006-52, Section 5.02.

¹⁵ IRC Section 179D(c)(1)(C).

¹⁶ IRC Section 179D(c)(1)(D), as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13303(a)(2).

¹⁷ IRC Section 179D(b)(2), as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13303(b)(2).

¹⁸ IRC Section 179D(b), as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13303(b).

¹⁹ U.S. Department of Labor, Prevailing Wages.

²⁰ IRC Section 179D(b)(4), as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13303(b)(4).

²¹ IRS Notice 2006-52.

²² IRC Section 179D(d)(3), as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13303(b)(6).

²³ IRC Section 30C(i), as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13404(a).

²⁴ IRC Sections 30C(a); 30C(b); 30C(g); as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13404.

²⁵ IRC Section 30C(c)(2), as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13404(c).

²⁶ IRC Section 30C(f)(2), as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13404(f)(2).

²⁷ IRC Section 30C(c)(3), as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 13404(e).

²⁸ The Commerce Department will issue, in December 2022, a map and listing of all urban areas based on the 2020 Census; see <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html>.

²⁹ IRC Section 30C(d)(1).

³⁰ IRC Section 30C(e)(1).

Buying an Electric Vehicle? Know These Tax Law Changes

Are you thinking of buying an electric vehicle or a plug-in hybrid?

And are you looking to benefit from the \$7,500 tax credit? If so, you have much to consider—thanks to the newly enacted Inflation Reduction Act.

Let's get started.

The Electric Vehicle Credit for 2023 and Later

A new clean vehicle credit goes into effect in 2023 and continues through 2032. Although the credit maximum remains \$7,500, the credit is massively changed. Due to the changes, many taxpayers will no longer be able to claim the credit. And there may be fewer electric vehicles available that qualify for the credit.

Key point. Business taxpayers have a decision to make when buying an electric vehicle in 2023 or later. They can choose either the new clean vehicle credit or the new qualified commercial clean vehicle credit.¹

200,000 Cap Eliminated

The old credit was limited to the sale of 200,000 electric vehicles per manufacturer. The new credit eliminates this cap. Thus, for example, electric vehicles manufactured by GM, Toyota, and Tesla can qualify for the credit if they meet the price cap and other requirements.

Credit Amount

The maximum credit for 2023 and later remains at \$7,500. But it has two components:²

1. A \$3,750 credit if the electric vehicle complies with the domestic sourcing requirements for critical minerals used in the battery, as explained below
2. A \$3,750 credit if the electric vehicle satisfies domestic content requirements for battery components

According to the Alliance for Automotive Innovation, no electric vehicle currently available for purchase will qualify for the full \$7,500 credit on January 1, 2023. Electric vehicle manufacturers are working feverishly to change this. The critical minerals requirements may prove particularly difficult to comply with over the next few years. The domestic content requirements should be easier.

Thus, there may be a number of electric vehicle models that qualify for only a \$3,750 credit.

Key point. The business buyer avoids the component problem when using the qualified commercial clean vehicle credit.³

Buyer Income Caps

The credit may not be claimed by taxpayers whose modified adjusted gross income (AGI) is more than⁴

- \$300,000 for joint-return filers and surviving spouses,
- \$225,000 for heads of household, or
- \$150,000 for unmarried taxpayers and married taxpayers who file separately.

Modified AGI is adjusted gross income plus foreign earned income that is otherwise excluded from U.S. taxation. You can use your modified AGI for the prior year if it is lower.

Key point. The business buyer avoids the AGI caps when using the qualified commercial clean vehicle credit.⁵

Electric Vehicle Price Caps

The tax code does not allow the new clean vehicle credit if the manufacturer's suggested retail price (MSRP) for the vehicle exceeds⁶

- \$80,000 for a van,
- \$80,000 for a sports utility vehicle (SUV),
- \$80,000 for a pickup truck, or
- \$55,000 for any other vehicle.

The IRS will provide guidance on which electric vehicles fall within these categories. Note that these caps are cliffs, not phaseouts. The credit is totally eliminated if the applicable MSRP is even one dollar over the cap.

Key point. The business buyer avoids the dollar caps when using the qualified commercial clean vehicle credit.⁷

Domestic Content Requirement for Electric Vehicle Batteries

The credit is designed to encourage the manufacture of electric vehicles in the United States. Thus, it imposes domestic content requirements on critical minerals and components used in electric vehicle batteries. The IRS will issue guidance on how these rules will work.

Critical minerals include lithium, copper, cobalt, and nickel used in electric vehicle batteries. Currently, the U.S. imports the vast majority of these minerals from China, Brazil, Chile, Australia, and South Africa.

The new credit requires that a specific percentage of critical minerals be sourced in North America or from countries with which the U.S. has a free trade agreement. The sourcing percentage rises from 40 percent in 2023 to 80 percent in 2027 and later. This requirement will likely cause production bottlenecks and drive up the cost of electric vehicles.

In addition, a specific percentage of battery components must be manufactured or assembled in North America. The percentage rises from 50 percent in 2023 to 100 percent in 2029 and later.⁸

Beginning in 2025, any electric vehicle with battery minerals from a “foreign entity of concern” will be excluded from the tax credit. These foreign entities include China, Russia, North Korea, and Iran. The same rule applies starting in 2024 for battery components.⁹ This should knock China completely out of the U.S. electric vehicle battery supply chain by 2025.

Domestic Assembly Requirement

The final assembly of the electric vehicle must occur within North America.¹⁰ In other words, the component parts must be put together at a plant or factory located in the U.S., Canada, or Mexico. This will be an easier requirement for electric vehicle manufacturers to meet than the battery sourcing rules.

Credit for Used Electric Vehicles

For the first time, a clean vehicle credit will be available to individual purchasers of used electric vehicles (i.e., not corporations) starting in 2023. This credit is limited to electric vehicles that cost \$25,000 or less and that are at least two years old. Very few used electric vehicles currently come in under that \$25,000 price cap, although this may change in future years.

The credit is the lesser of \$4,000 or 30 percent of the purchase price. To claim the credit, the individual taxpayer must purchase the used electric vehicle from a dealer, not from a private party.¹¹ In addition, the purchaser’s AGI must be less than¹²

- \$150,000 for joint-return filers and surviving spouses,
- \$112,500 for heads of household, or
- \$75,000 for single taxpayers and married taxpayers who file separately.

The used electric vehicle credit may be claimed only once per used electric vehicle—that is, by the first purchaser of the used electric vehicle. Additionally, the purchaser must not have claimed a used electric vehicle credit during the prior three years.

Used electric vehicles don’t have to satisfy either the same domestic content requirement for batteries as new electric vehicles or the North American assembly rules.

New Rule for 2024 and Later

Point-of-sale credit. Starting in 2024, an electric vehicle purchaser may transfer their credit to the dealer, who will in turn offer up to a \$7,500 cash rebate or price reduction, or treat the

purchaser as having made a down payment in the amount of the credit.¹³ This way, electric vehicle purchasers will benefit from the credit immediately rather than having to wait until they file their tax returns.

Key point. This is a tremendous boon for lower-income purchasers because the credit is non-refundable and some taxpayers may not owe enough tax to use the entire \$7,500 credit when they file their taxes.

What If You Qualify for Both the Personal and Business Electric Vehicle Credits?

You could qualify for the electric vehicle tax credit using either the clean vehicle credit or the commercial clean vehicle credit. Note the word “either.” It’s either one or the other, not both.¹⁴

Ordinarily, if you’re able to find an electric vehicle that qualifies for the full \$7,500 personal clean vehicle credit and you come within the income limits, you should claim the personal credit. The commercial clean vehicle credit can never be larger than the personal credit (unless the electric vehicle weighs over 14,000 pounds), but it can be smaller.

The commercial clean vehicle credit is equal to the lesser of¹⁵

- 15 percent of the vehicle’s basis (30 percent if the vehicle is fully electric), or
- the incremental cost of the vehicle (the excess of the electric vehicle’s purchase price over the price of a comparable non-electric vehicle).

The maximum credit is \$7,500—the same as the personal credit.

For example, if you purchase an \$80,000 fully electric van and use it 25 percent for business, your depreciable basis is \$20,000. Your maximum commercial clean vehicle credit is \$6,000 (30 percent x \$20,000).

But if you claim the personal clean vehicle credit, you’ll get \$7,500—which you need to allocate, claiming 25 percent as a business credit and 75 percent as a personal credit.¹⁶

Key point. With no taxable income, you would get zero benefit from the non-refundable personal tax credit. But you can carry the non-refundable business credit back one year and forward until used for up to 20 years.¹⁷

Also, if you purchase your electric vehicle during 2024 or later, you’ll be able to transfer the personal clean vehicle credit to the dealer and get up to \$7,500 in a price reduction or rebate at the time of purchase. This is not possible with the commercial clean vehicle credit—you must claim the commercial credit when you file your tax return.

Takeaways

Here are six things to know from this article:

1. A new clean vehicle tax credit takes effect in 2023. The maximum amount of the new credit is also \$7,500, but many new requirements are imposed, including
 - electric vehicle price caps,
 - electric vehicle purchaser income caps, and
 - domestic sourcing requirements for electric vehicle batteries.
2. Beginning in 2023, the new clean vehicle credit eliminates the 200,000 vehicles per manufacturer cap. Popular electric vehicles manufactured by GM, Toyota, and Tesla will qualify for the 2023 credit if they meet the price cap and other requirements.
3. Starting in 2023, individual taxpayers can purchase certain used electric vehicles from dealers (not individuals) and claim a credit of up to \$4,000 if their income is below an annual cap.
4. Starting in 2024, electric vehicle purchasers will be able to transfer their credit to the dealer, who will in turn offer them up to \$7,500 in a cash rebate or price reduction, or treat the credit as a down payment.
5. Business taxpayers have the option of qualifying for the tax credit under either the personal clean vehicle credit or the commercial clean vehicle credit.
6. The commercial clean vehicle credit avoids the North American assembly rules, income limits, and price-of-vehicle limits.

¹ For the business option, see our article titled [New Law: Business Tax Credits for Your Electric Vehicle Purchases](#).

² IRC Section 30D(b).

³ See [New Law: Business Tax Credits for Your Electric Vehicle Purchases](#).

⁴ IRC Section 30D(f)(10).

⁵ See [New Law: Business Tax Credits for Your Electric Vehicle Purchases](#).

⁶ IRC Section 30D(f)(11).

⁷ See [New Law: Business Tax Credits for Your Electric Vehicle Purchases](#).

⁸ IRC Section 30D(e)(3).

⁹ IRC Section 30D(d)(7).

¹⁰ IRC Section 30D(d)(1)(G).

¹¹ IRC Section 25E(a).

¹² IRC Section 25E(b).

¹³ IRC Section 30D(g).

¹⁴ IRC Section 45W(d)(3).

¹⁵ IRC Section 45W(c).

¹⁶ IRC Section 30D(c)(1).

¹⁷ IRC Sections 38(b)(30); 39(a)(1).

Get Ready to Say Goodbye to 100 Percent Bonus Depreciation

Bonus depreciation became a tax thing in 2002, starting with 30 percent depreciation on certain new property.

From January 1, 2015, through September 27, 2017, lawmakers set a 50 percent rate on certain new property.

And then, the big “hip, hip, hooray!” Starting after September 27, 2017, you could claim 100 percent bonus depreciation on (wait for this) both new and used property.

But now, sadly, get ready to say goodbye to the “hip, hip, hooray!”

Starting in 2023 (which is right around the corner), lawmakers scheduled bonus depreciation to decline 20 percent each year, as follows:¹

Year Property Placed in Service	Bonus %
1/1/2015 through 9/27/2017 (new property only)	50%
9/28/2017 through 2022	100%
2023	80%
2024	60%
2025	40%
2026	20%
2027 and later	0%

Example. If you had purchased \$100,000 of qualifying equipment for your business and place it in service in 2022, you were able to deduct \$100,000 in 2022 using 100 percent bonus depreciation. If you waited until 2023, bonus depreciation delivers an 80 percent deduction.

Does this mean you should have rushed out to purchase business property before 2022 ended, to take advantage of the 100 percent bonus? Not necessarily. You likely have an alternative that is not going away and that can be as good as bonus depreciation: IRC Section 179 expensing.

IRC Section 179 Expensing Versus Bonus Depreciation

Both IRC Section 179 expensing and bonus depreciation allow you to deduct in one year the cost of most types of tangible personal property, plus off-the-shelf computer software.² You can use both methods to deduct

- new and used property acquired by purchase from an unrelated party,³ and
- various types of non-structural improvements to non-residential (think commercial) buildings after they are placed in service.⁴

Moreover, the two deductions are not mutually exclusive. You can apply Section 179 to qualifying property up to the annual limit and then claim bonus depreciation for any remaining basis.⁵

Starting in 2023, when bonus depreciation will be less than 100 percent, any basis left after applying Section 179 and bonus depreciation is deducted with regular MACRS depreciation over several years.

But there are some significant differences between bonus depreciation and Section 179 expensing.

Annual Section 179 Limit

The most significant difference between Section 179 expensing and bonus depreciation is that Section 179 expensing is subject to an annual dollar limit. The Tax Cuts and Jobs Act doubled the limit to \$1 million in 2018. The inflation-adjusted limit for 2022 is \$1,080,000.⁶ It is estimated to be \$1,160,000 in 2023.

Additionally, because Section 179 is intended to help smaller businesses, there is also a limit on the total amount of Section 179 property a business can purchase each year when claiming the deduction.

You must reduce your available Section 179 deduction by one dollar for every dollar by which your annual purchases exceed the applicable limit. The limit is \$2,700,000 for 2022.⁷ Thus, if you place in service \$3,780,000 of Section 179 property in 2022, you have to reduce your available Section 179 deduction by \$1,080,000 ($\$3,780,000 - \$2,700,000 = \$1,080,000$). Net result: you have no available Section 179 deduction.

The Section 179 purchase limit is estimated to be \$2,890,000 in 2023.

There is no dollar limit on bonus depreciation. But the Section 179 limits are so large that they don't impact smaller businesses.

Section 179 Expensing May Not Create a Loss

Section 179 expensing is limited to the annual net taxable income earned by the taxpayer's business (not counting the Section 179 deduction). This can be misleading for many taxpayers because for the Section 179 deduction, business income includes W-2 income.

The key point is that the Section 179 deduction may not exceed defined business income and still create a loss for the year. Section 179 amounts that may not be deducted are carried forward indefinitely to future years.⁸

Bonus Depreciation Can Create a Loss

Bonus depreciation is unlimited in amount and may result in a business loss. In the past, this was a significant difference because a business could carry a net operating loss (NOL) back to prior years and claim a refund for taxes paid in those years.

But starting in 2021, you may no longer carry NOLs back; you may only carry them forward indefinitely. In addition, NOLs may offset only up to 80 percent of taxable income for any year.⁹

More Than 50 Percent Rule

To qualify for Section 179 expensing, you must use your qualifying Section 179 property more than 50 percent for business. If your business use of the property falls to 50 percent or below during the property's recovery period, you have to give back some or all of your Section 179 deduction through what the IRS calls "recapture."¹⁰

There is no 50 percent business-use requirement for bonus depreciation except for listed property—primarily, passenger vehicles.

Bonus Depreciation Applies Class-Wide

If you use bonus depreciation, you must use it for all assets that fall within the same class. You may not pick and choose individual assets.

Section 179 expensing doesn't apply class-wide. Thus, you may pick and choose which assets you wish to deduct using Section 179 within the same asset class. This is a potential advantage.

Passenger Automobiles

The term "passenger automobile" means any four-wheeled vehicle that is manufactured primarily for use on public streets, roads, and highways, and that is rated at 6,000 pounds unloaded gross vehicle weight or less (think curb weight).¹¹

But in the case of a truck, van, SUV, or crossover vehicle, the passenger automobile 6,000-pound rule applies to "gross vehicle weight"—which, in street terms, is generally referred to as the gross vehicle weight rating (GVWR).¹²

Bonus depreciation is limited to \$8,000 for such tax code-defined passenger automobiles no matter how much they cost. This limit will be the same in 2023.¹³ So there is no point in purchasing a defined passenger automobile in 2022 instead of 2023 to take advantage of bonus depreciation.

SUVs and Other Heavy Vehicles

You may use 100 percent bonus depreciation on trucks, vans, SUVs, and crossover vehicles with a GVWR of 6,001 pounds or more. You can also use 100 percent bonus depreciation on cars with a curb weight of 6,001 pounds or more.

In contrast, in 2022, the Section 179 deduction is limited to \$27,000 for trucks, vans, SUVs, and crossover vehicles with a GVWR of 6,001 to 14,000 pounds. (The \$27,000 limit does not apply to pickup trucks with a bed of at least six feet or to vans that seat more than nine behind the driver.)¹⁴

For cars, the Section 179 deduction does nothing. Yes, nothing. For cars, it replaces depreciation—so, you get no additional benefit.¹⁵

The Section 179 expensing limit is estimated to be \$28,900 in 2023.

Key point. You can achieve 100 percent bonus depreciation in 2022, but in 2023 bonus depreciation drops to 80 percent. So to get the maximum deduction in 2023, you need a combination of Section 179 expensing, bonus depreciation and MACRS depreciation.

Example. Burt purchases a \$50,000 SUV in 2023 and uses it 100 percent for business, which makes for easy numbers. He deducts \$28,900 with Section 179 expensing and then \$16,880 with 80 percent bonus depreciation (80 percent x \$21,100 = \$16,880). He depreciates his remaining \$4,220 basis using the 200 percent declining balance method, resulting in an \$844 deduction. His total deduction is \$46,624 (\$28,900 + \$16,880 + \$844).

Had he purchased the SUV in 2022, he would have gotten a \$50,000 deduction using 100 percent bonus depreciation.

Land Improvements

Most types of real property (i.e., Section 1250 property), including land improvements, do not qualify for the Section 179 deduction. (But you may use Section 179 expensing to deduct interior improvements to non-residential real property.)

In contrast, you can use bonus depreciation to deduct land improvements with a 15-year class life. These improvements include sidewalks, fences, driveways, landscaping, and swimming pools.

When You Should Have Taken Advantage of 100 Percent Bonus Depreciation for 2022

There are a few situations where it may be advisable to purchase and place property in service by the end of 2022 to take advantage of 100 percent bonus depreciation:

- If your business needs to purchase more than \$3,780,000 of property, it won't be able to use Section 179 expensing at all. But you can use 100 percent bonus depreciation if you place the property in service in 2022. When you're purchasing this much property, an additional 20 percent deduction for 2022 can really add up. If you wait until 2023, you'll get only 80 percent bonus depreciation.
- If your business needs to purchase more than \$1,080,000 in property in 2022, its Section 179 deduction will be exhausted and you'll have to use bonus depreciation for purchases over \$1,080,000. Again, when you're purchasing this much property, an additional 20 percent deduction for 2022 can really add up.
- If you need to purchase land improvements, you won't be able to deduct them with Section 179. Purchasing them this year will enable you to deduct them immediately using bonus depreciation.
- If you need to purchase a business-use SUV that weighs between 6,001 and 14,000 pounds, your deduction will be somewhat larger if you purchase the vehicle in 2022 instead of 2023, because bonus depreciation is 80 percent in 2023.
- If you want the maximum possible 2022 deduction for property you use less than 50 percent for business (excluding vehicles and other listed property), you should have purchase it in 2022 and take advantage of the 100 percent bonus depreciation.

Keep in mind that it's not enough to have purchased property by December 31, 2022, to claim bonus depreciation or Section 179 expensing. You must also have placed the property in service in your business by year-end.

You don't have to actually use the property, but it must be ready for use in your business.¹⁶

That said, we recommend actual use, such as driving at least one business mile, to eliminate any discussion of "ready for use."

Takeaways

Here are five takeaways from this article:

1. One hundred percent bonus depreciation ended on December 31, 2022. It was reduced to 80 percent in 2023 and will decline 20 percent each succeeding year through 2027, when it will be zero.
2. Section 179 expensing remains an alternative or supplement to bonus depreciation.
3. If you need to purchase a business-use SUV with a GVWR between 6,001 and 14,000 pounds, your deduction will be somewhat larger if you purchased it in 2022 and take advantage of 100 percent bonus depreciation.
4. Section 179 expensing is subject to annual dollar limits that don't apply to bonus depreciation. If your business needs to purchase property over the limits, it will get a 20 percent larger first-year deduction if it did so in 2022 (versus 2023) and takes advantage of 100 percent bonus depreciation.
5. Bonus depreciation for passenger vehicles is capped at \$8,000 for 2022 and future years, so there is no point in purchasing such a vehicle in 2022 to get a larger deduction.

¹ IRC Section 168(k)(6)(A).

² IRC Sections 168(k)(2)(A)(i); 179(d)(1). ³

IRC Section 168(k)(2)(A)(ii).

⁴ IRC Sections 168(e); 179(e).

⁵ Rev. Proc. 2002-33.

⁶ Rev. Proc. 2021-45.

⁷ Ibid.

⁸ IRC Section 179(b)(3).

⁹ IRC Section 172(a)(2).

¹⁰ IRS Reg. 1.179-1(e).

¹¹ IRC Section 280F(d)(5).

¹² Ibid.

¹³ IRC Section 168(k)(2)(F)(i).

¹⁴ IRC Section 179(b)(5). Rev. Proc.2021-45.

¹⁵ IRC Section 280F(d)(1).

¹⁶ Reg. Section 1.167(a)-11(e)(1)(i).

