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June 9, 2023

<u>Sent via Email:</u>

Tom@boxhouse.com
cc: eremy@boxhouse.com
BoxHouse Inc
C/O Atwood Innovation Plaza
225 South 700 East Suite 147
Saint George, UT 84770

Re: IRC §168(k) Bonus Depreciation Strategies for BoxHouse

You have requested that I provide you with my opinion for the following facts:

BoxHouse is a company that sells foldable/retractable houses which are built in a factory and transported on wheels. The BoxHouse is similar in functionality to a "Pod" trailer or worksite trailer in that they are easily and readily transported but are different to mobile homes in that they do not have to remain on wheels and are essentially temporary in nature. The BoxHouses are manufactured in Texas and Utah. The State of Utah issues a Vehicle Identification Number (VIN) classifying the BoxHouse as a "trailer" for registration purposes. Based on upon the aforementioned facts the following is the applicable law:

The Tax Cuts and Jobs Act of 2017 or "TCJA" (Pub. L. No. 115-97) temporarily allowed taxpayers to write off the cost of acquisitions of qualified property immediately, by raising the bonus depreciation rate to 100%. The 100% bonus depreciation allowance applies to "qualified property" (as defined below) acquired and placed in service after September 27, 2017, but before January 1, 2023 (January 1, 2024 for long production period property and specified aircraft). The bonus depreciation percentage is phased down by 20% per year in years 2023 through 2026 (2024 through 2027 for long production period property and specified aircraft), and is not available for property placed in service after 2026 (after 2027 for long production period property and specified aircraft). For the tax year 2023, the available bonus depreciation is 80% in the year of placement in service.

The TCJA also expanded bonus depreciation by applying it to acquisitions of additional types of new property and certain used property. The TCJA also expanded bonus depreciation by making it available for additional types of new property and to used property that was not previously used by the taxpayer, not acquired in a nonrecognition transaction, and not substituted basis property.

<u>"Qualifying property"</u>

In order to qualify for Bonus Depreciation under IRC §168(k) the property acquired must satisfy 3 tests:

1. The property purchased must be of a certain type of property, one of which includes property with a Modified Accelerated Cost Recover System ("MACRS") recovery period of 20 years or less[1];

2. If the property was acquired after September 27, 2017, either (1) its original use must begin with the taxpayer **or** (2) it must meet all of the requirements for used property acquisitions[2] (for purposes of this opinion, only the first "original use" requirement will be discussed);

3. Generally, the property must be placed in service by the taxpayer before January 1, 2027.[3]

Original Use Test

One of the requirements to be "qualified property" for bonus depreciation purposes is that the depreciable property either must meet the original use requirement or must meet the used property acquisition requirements.[4]

Under the regulations, depreciable property meets the original use requirement if the original use of the property begins with the taxpayer. Original use is the first use to which the property is put, whether or not that use corresponds to the taxpayer's use of the property. The original use requirement is satisfied if the taxpayer incurs additional capital expenditures to recondition or rebuild property that the taxpayer acquires or owns.

If a taxpayer acquires new property for personal use and later converts the property to property used in the taxpayer's trade or business (or for the taxpayer's production of income), the taxpayer is considered the original user of the property. However, if another person initially acquires new property for personal use, and then a taxpayer acquires the property from the person for use in the taxpayer's trade or business or for the taxpayer's production of income, the taxpayer is not considered the original user of the property.[5]

If a taxpayer acquires new property and holds the property primarily for sale to customers in the ordinary course of the taxpayer's business, then later withdraws the property from inventory and uses the property primarily in the taxpayer's trade or business, or primarily for the taxpayer's production of income, the taxpayer is considered the original user of the property.[6]

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[1] §168(k)(2)(A)(i); Reg. §1.168(k)-2(b)(2)(i), T.D. 9874, 84 Fed. Reg. 50,108 (Sept. 24, 2019), applicable to qualified property placed in service by the taxpayer during or after the taxpayer's tax year that includes September 24, 2019.

[2] §168(k)(2)(A)(ii); Reg. §1.168(k)-2(b)(3)(ii).

[3] §168(k)(2)(A)(iii);

[4] §168(k)(2)(A)(ii); Reg. §1.168(k)-2(b)(3)(i) (references to Reg. §1.168(k)-2(b)(3)(ii) (original user requirement) and §1.168(k)-2(b)(3)(iii) (used property acquisition requirement).

[5] Reg. §1.168(k)-2(b)(3)(ii)(B)(1).

[6] Reg. §1.168(k)-2(b)(3)(ii)(B)(2).

Acquisition Date

Special rules apply for the purposes of determining the date of a taxpayer's acquisition of property for purposes of the acquisition date requirement in §168(k)(2)(B)(i)(III), taking into account the binding contract rule in Pub. L. No. 115-97 §13201(h)(1)(A).[7]

In general, depreciable property meets the acquisition date requirement if the property is acquired by the taxpayer after September 27, 2017, or is acquired by the taxpayer pursuant to a written binding contract entered into by the taxpayer after September 27, 2017.

However, Reg. §1.168(k)-2(b)(5)(ii)(A) provides that property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract entered into before the property is manufactured, constructed, or produced for the taxpayer's use in its trade or business or for its production of income is not acquired pursuant to a written binding contract, but is self-constructed property.[8] Accordingly, such property is subject to the self-constructed property acquisition rules, i.e., acquired after September 27, 2017 if manufacturing, construction, or production of such property begins after September 27, 2017, such that the binding contract date does not factor into the determination of when such property is acquired.

For purposes of this opinion, all contracts for construction were entered into and all construction commenced after September 27, 20217 and so therefore Reg. Reg. §1.168(k)-2(b)(5)(ii)(A) is not applicable and all property is considered acquired after September 27, 2017, required date.

State and Local Law as Guide for Federal Government

It is well settled that legal relationships are determined by the applicable law of the jurisdiction in which the entity was formed or operates, whether it be federal (e.g., bankruptcy) or local (e.g., corporate and contract), but the tax effect of those relationships is determined solely by the Code and its interpretations. State law determines the nature of the legal interest that the taxpayer has as the Internal Revenue Code creates no property rights but merely attaches consequences, as defined in the Code, to those rights created under state law.

In *United States v. Nat'l Bank of Commerce*, 472 U.S. 713 (1985). The Supreme Court, quoting a number of its previous decisions and of other courts, said:

> '[In] the application of a federal revenue act, state law controls in determining the nature of the legal interest which the taxpayer had in the property.'" Aquilino v. United States, 363 U.S. 509, 513 (1960), quoting Morgan v. Commissioner, 309 U.S. 78, 82 (1940). See also Sterling National Bank, 494 F.2d, at 921. This follows from the fact that the federal statute "creates no property rights but merely attaches consequences, federally defined, to rights created under

[7] Reg. §1.168(k)-2(b)(5).
[8] Reg. §1.168(k)-2(b)(5)(ii)(A).

state law." United States v. Bess, 357 U.S. 51, 55 (1958). And those consequences are "a matter left to federal law." United States v. Rodgers, 461 U.S., at 683. "[Once] it has been determined that state law creates sufficient interests in the [taxpayer] to satisfy the requirements of [the statute], state law is inoperative," and the tax consequences thenceforth are dictated by federal law. United States v. Bess, 357 U.S., at 56-57.

Similarly, in *Commissioner v. Estate of Bosch*, 387 U.S. 456 (1967) The Supreme Court stated: "...it is provided that in the absence of federal requirements such as the Constitution or Acts of Congress, the "laws of the several states . . . shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply." This stands for the principle that if there is no decision by the State's highest court, federal authorities must apply what they find to be the state law after giving "proper regard" to relevant rulings of other courts of the State.

Application to the Facts and Conclusion:

In the case at hand, BoxHouse manufactures foldable trailer-like structures that are transported via removable wheels attached to a trailer, as depicted in Exhibit "A" and which the State of Utah defines a as vehicle as evidenced by the State's requirement to maintain a Vehicle Identification Number (VIN) as evidenced by the attached Exhibit "B".

The BoxHouse furthermore should qualify as a "Qualified Property" as a "trailer" is considered 6-year MACRS under the depreciation schedule.[9] The initial used of the BoxHouse is intended to be used by the taxpayer in their trade or business and likewise placed in service after September 27, 2017.

As such, and assuming the taxpayer purchasing a BoxHouse product is using the BoxHouse as part of their business or "for the production of income", the purchaser should be able to depreciate 80% of the cost of the BoxHouse under §168(k) in the first year of purchase and use.

Benjamin Miller, Esq.

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This letter only covers the specific tax issues and tax consequences described herein; no other federal, territorial, or local laws of any kind were considered, and are beyond the scope of this Letter. This opinion is based on an analysis of the Code, Treasury regulations, rulings, and other tax authorities which we deem relevant, all in existence on the date hereof, and represents our interpretations of such authority. This opinion is also based upon the accuracy of the facts and

[9] https://cs.thomsonreuters.com/ua/fixa/cs_us_en/ass_life_tbl/hid_help_asset_lives.htm

representations received by our client and his counsel. Therefore, any variation or differences in the facts or representations referred to therein, for any reason, might affect my conclusions, perhaps in an adverse manner, and render them inapplicable. In addition, this opinion is merely my opinion and is not binding on a court or the IRS.

The foregoing is subject to change, and any change could have a retroactive effect on the opinion expressed herein. We assume no responsibility to update this letter, or to otherwise notify you, due to any such changes. This opinion is intended solely for your benefit and it is not intended to be relied upon by third parties.