

Sent to Regulations.gov portal

May 8, 2026

The Honorable Scott Bessent  
Secretary of the Treasury  
Commissioner of Internal Revenue  
U.S. Department of the Treasury  
Washington, DC 20220

**RE: Comments to Notice 2026-16, Interim Guidance on Special Depreciation Allowance for Qualified Production Property**

Dear Secretary Bessent:

We are writing on behalf of the Federal Tax Policy Committee of the Texas Society of Certified Public Accountants (TXCPA) to thank you for the interim guidance provided in Notice 2026-16 regarding the new special depreciation allowance for qualified production property under Section 168(n). This guidance is helpful for businesses making domestic investment decisions, for their CPAs assisting them, and in support of the tax policy objectives of Section 168(n).

As you continue to develop proposed regulations in this area, we respectfully ask that you consider a few additional issues detailed below:

**1. Definitions of Key Statutory Terms**

Page 14 of the notice states, "any portion of property used to store finished products and certain other items is not used as an integral part of a QPA and is thus ineligible property (see Section 5.01(2)(b)(ii) of this notice)." It would be helpful to clarify the definition of an "integral part" of a qualified production activity in a common situation faced in the foodservice industry. Where a restaurant prepares food for customers, the notice would not allow the facility to use the special depreciation unless the restaurant meets the *de minimis* rule because the food is not prepared in a facility separate from retail sales. However, if the kitchen preparing food for restaurant customers also processes and packages items for retail sale in a separate shop within the same building or for sale in other branches of the same restaurant chain where it is delivered, a portion of the kitchen activity should qualify, with a reasonable allocation between qualifying and non-qualifying costs.

Examples might include a barbecue restaurant that also bottles and sells its sauce or cooks meat for sale other than in the restaurant for consumption on premises or a doughnut shop that also delivers donuts for sale in other retail outlets. Perhaps the proposed regulations might use the term "production portion of the facility" instead of focusing on "activities" in this situation.

**2. Cost Identification and Allocation**

The notice provides guidance on identifying and allocating basis to eligible property, beginning on page 14. This could be improved in the proposed regulations by including a definition or examples for the

documentation requirements to substantiate eligible costs.

3. **Start of Construction and Placed-in-Service Issues**

Please clarify what constitutes the “start of construction” for purposes of Section 168(n), including whether concepts used in other depreciation or credit provisions apply, and also how phased construction projects should be treated.

4. **Expansions, Rehabilitations and Improvements**

Consider addressing the issue of partial improvements that might qualify even when the underlying structure does not qualify.

5. **Recapture Rules During the 10-Year Period**

- Recapture in Bankruptcy – With respect to recapture of special depreciation during the 10-year period, the regulations should provide an exclusion from recapture or potential recapture when a business is in bankruptcy. Liquidating the business might take years, and without such an exclusion, this could result in unfair “phantom” income to the estate.
- Involuntary Conversion – With respect to recapture of special depreciation during the 10-year period, regulations should provide an exclusion from recapture or potential recapture in the event of an involuntary conversion, such as destruction of building as a result of a disaster. Recovering from events such as these could also take years and result in the “phantom” income alluded to in the previous paragraph.

6. **Election Mechanics**

Regarding the revocability of the election, page 40 states, “Any election made under Section 7 of this notice, and any designation under Section 4.09 of this notice contained in such election, may be revoked only by filing a request for a private letter ruling and obtaining the written consent of the Secretary. The Secretary will provide consent only in extraordinary circumstances. See Section 168(n)(6)(B). If the request for revocation would allow a taxpayer to use hindsight, the extraordinary circumstances standard is not met.” This standard for revocation seems unduly restrictive, with the burden on the taxpayer to show that a revocation was not based on hindsight.

We appreciate the Treasury’s and the IRS’s consideration of these comments. The Federal Tax Policy Committee stands ready to assist further as additional guidance under Section 168(n) is considered. Please do not hesitate to contact us should additional information or clarification be helpful.

\*\*\*\*\*

TXCPA is a nonprofit, voluntary professional organization representing more than 28,000 members. One of the expressed goals of the TXCPA is to speak on behalf of its members when such an action is in the best interest of its constituency and serves the cause of the CPAs of Texas, as well as the public interest. TXCPA has established a Federal Tax Policy Committee to represent those interests on tax-related matters. The committee also has the discretion to comment on reporting and disclosure requirements under Title 31 of the U.S. Code of Federal Regulations. The committee has been authorized by the TXCPA Leadership Council to submit comments on such

Treasury Secretary Bessent  
Comments to Notice 2026-16, Interim Guidance on QPP Special Depreciation Allowance  
May 8, 2026  
Page 3

matters of interest to the committee membership. The views expressed herein have not been approved by the Leadership Council or Board of Directors and, therefore, should not be construed as representing the views or policies of the TXCPA.

We would be happy to assist in any way possible. Please feel free to contact me at 214-276-5001 or [jsmith@dallascpas.com](mailto:jsmith@dallascpas.com) or TXCPA Staff Liaison Patty Wyatt at 817-656-5100 or [pw Wyatt@tx.cpa](mailto:pw Wyatt@tx.cpa).

Sincerely,

A handwritten signature in black ink that reads "James A. Smith". The signature is written in a cursive style with a large, stylized initial "J".

James A. Smith, CPA, CGMA  
Chair, Federal Tax Policy Committee

cc: Erin M. Collins, National Taxpayer Advocate