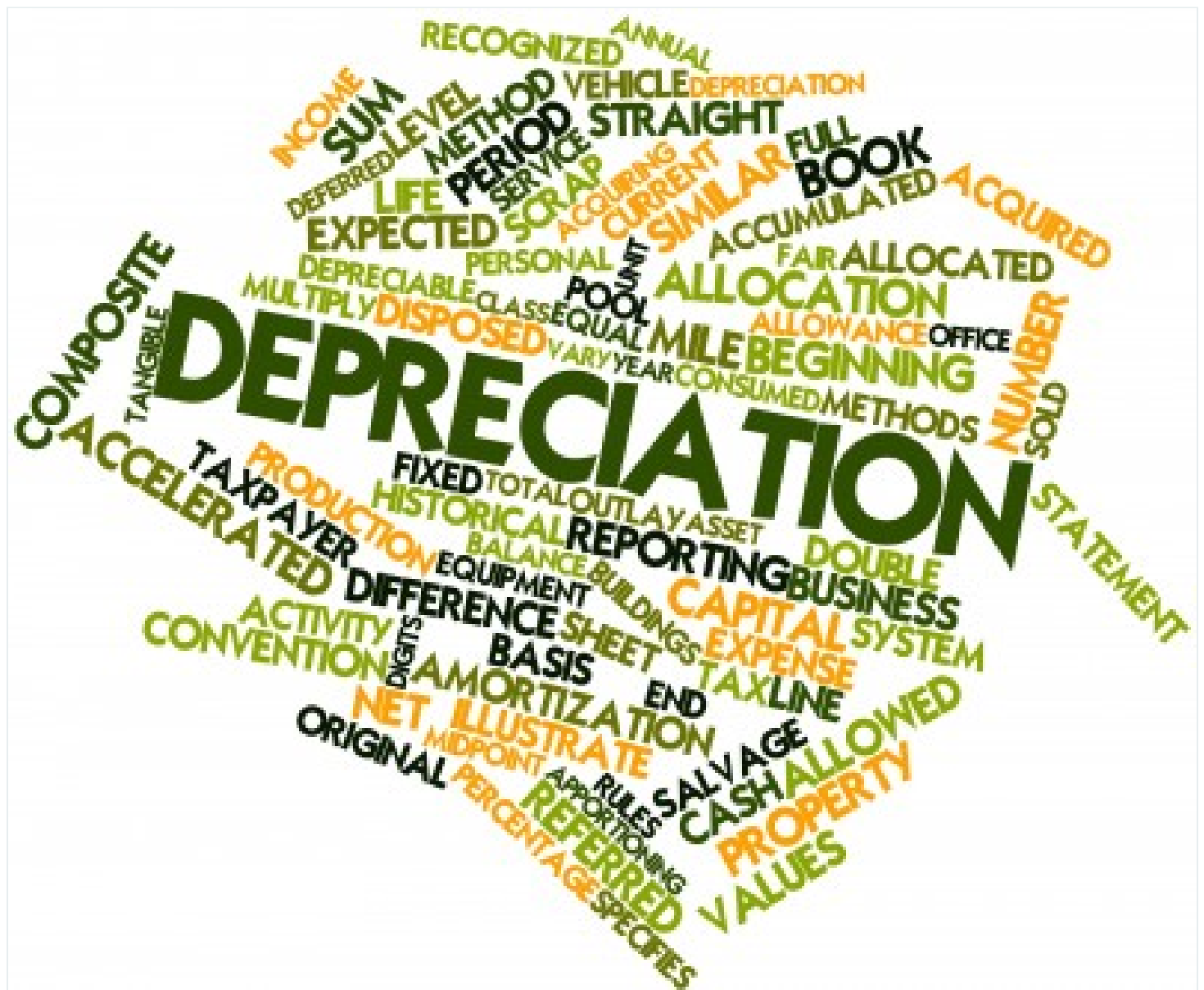


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including real estate, beginning in the year the property is "placed in service." Similar rules apply to Section 179 deductions and "bonus depreciation" deductions, as ...

Ken Berry • May. 22, 2017



Can a business claim depreciation for a retail store before it is actually “open for business” to the public? According to a case decided a couple of years ago by a district

court in Louisiana, it's possible if certain other conditions are met. But the IRS

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Under long-standing principles, whether or not property is considered to be placed in service for depreciation purposes is based on the property's specific function and when it is in a condition or state of readiness and availability for that function. The determination is made from the applicable facts and circumstances.

Thinking outside the box: For instance, if you buy equipment to be used in business production, it's generally not enough to merely acquire the equipment and have it delivered to the warehouse. The equipment must be removed from the box and the business must actually start using it for its intended purpose.

The recent case and nonacquiescence involved bonus depreciation deductions claimed under the Gulf Opportunity Zone Act of 2005 (GO Zone Act). This legislation provided tax incentives to businesses in the wake of Hurricane Katrina and other storms.

Key facts of the case:

A retail operation that sells home building material and supplies began construction of two new stores in 2007. As of December 31, 2008, both stores had been issued certificates of occupancy (COs), allowing them to receive equipment, shelving, racks and merchandise. Workers were able to install and stock the items.

However, the stores were not yet open for business on December 31, 2008. The COs did not allow customers to enter the buildings.

The District Court agreed with the retailer that the buildings were placed into service in 2008, so it allowed the GO Zone Act bonus depreciation. It found that the buildings were placed in service because they were substantially complete and in a condition of readiness and availability to perform the function for which they were built—to house and secure racks, shelving and merchandise. In arriving at this

decision, the Court rejected the IRS' argument that the buildings were not placed in

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What about clients in a similar situation? If they're standing on firm ground, you may advise clients to stick to their principles, but caution them to be prepared for a challenge on this issue.

Accounting

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