U.S. Chamber of Commerce

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April 21, 2026

The Honorable Kenneth J. Kies
Assistant Secretary (Tax Policy)
U.S. Department of the Treasury
1500 Pennsylvania Avenue N.W., Room 3120
Washington, D.C. 20220

Re: Interim Guidance on Special Depreciation Allowance for Qualified Production Property (Notice 2026-16)

Dear Mr. Kies:

On behalf of the U.S. Chamber of Commerce ("Chamber"), I am pleased to submit the enclosed comments on the interim guidance provided in Notice 2026-16[1] concerning the new special depreciation allowance for qualified production property under section 168(n) of the Internal Revenue Code.[2] Added to the Code last year by the One Big Beautiful Bill Act ("OBBBA"),[3] section 168(n) temporarily allows businesses the election to fully and immediately expense certain nonresidential property used in manufacturing, agricultural production, chemical production, or refining and placed in service after July 4, 2025.

The Chamber commends the Department of Treasury ("Treasury") and the Internal Revenue Service ("IRS") for prioritizing the release of interim guidance on this important new incentive, which Congress intended to strengthen U.S. industrial capacity, promote capital investment and modernization, and facilitate job creation.[4] Because section 168(n) is new, businesses have been reluctant to apply it in navigating major capital investment decisions without any guidance to validate its availability. In this regard, the interim guidance set forth in Notice 2026-26 offers

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[1] 2026-11 I.R.B. 685.

[2] Unless otherwise indicated, all textual references to "section" are to sections of the Internal Revenue Code of 1986, as amended ("Code").

[3] Pub. L. No. 119-21, § 70307, 139 Stat. 72, 198 (2025).

[4] *See* H. Comm. on the Budget, Rep. to Accompany H.R. 1, H.R. Rep. No. 119-106, pt. 2, at 1594 (2025). Lawmakers also believed that extending 100% bonus depreciation to qualified production property would promote neutrality between business investment and other business expenses while helping to reduce tax disadvantages faced by capital intensive businesses. *See id.*

welcome, actionable clarity for many businesses contemplating the use of this significant cost-recovery benefit.

As requested in Notice 2026-16, the enclosed comments identify a range of issues on which businesses seek additional guidance in the forthcoming proposed regulations. They also incorporate constructive feedback from our member companies regarding certain definitions and other rules described in the notice that warrant clarification or modification, consistent with congressional intent. Properly implemented, section 168(n) has the potential to spur substantial near-term capital investments that will support sustained economic growth for years to come.[5] The enclosed comments offer sound, practical recommendations to help Treasury and the IRS realize this potential.

The Chamber appreciates the opportunity to weigh in at this formative stage in section 168(n)'s implementation, and we encourage Treasury and the IRS to remain engaged with the business community in drafting the proposed regulations. As always, we would welcome the opportunity to discuss our comments with you or your colleagues in further detail and provide any additional information you may require. Please contact Sarah Corrigan, the Chamber's Tax Counsel, at (202) 680-8008 or SCorrigan@USChamber.com. Thank you for your attention to this matter.

Sincerely,

Watson M. McLeish
Senior Vice President, Tax Policy
U.S. Chamber of Commerce

Enclosure

[5] *See, e.g.,* Council of Econ. Advisers, Exec. Off. of the President, *The Annual Report of the Council of Economic Advisers* 30 (2026) (finding that temporary factory expensing under section 168(n) will lead to an investment surge of 3.1% to 3.8% during the first four years, adding another 0.1% to 0.2% to GDP and raising wages by about $500 to $900).

Provision	Issue(s)	Discussion
SEC. 70307. SPECIAL DEPRECIATION ALLOWANCE FOR QUALIFIED PRODUCTION PROPERTY		
I.R.C. § 168(n)(2)(A)(ii) (2) QUALIFIED PRODUCTION PROPERTY.—For purposes of this subsection— (A) IN GENERAL.—The term 'qualified production property' means that portion of any nonresidential real property— * * * (ii) which is used by the taxpayer as an integral part of a qualified production activity,	<u>Integral Part Requirement – De Minimis Rule</u> Section 168(n)(2)(A) defines the term qualified production property ("QPP") as that portion of any nonresidential real property that, inter alia, is used by the taxpayer as an integral part of a qualified production activity ("QPA").[1] Notice 2026-16 reaffirms this statutory requirement and explains that property, or a portion thereof, will satisfy it if a QPA is conducted in, or takes place within, the physical space of such property or within a portion of the physical space thereof.[2] The notice adds that, subject to a special rule for integrated facilities discussed below, each unit of property must satisfy the integral part requirement on its own. The notice introduces a taxpayer-favorable "de minimis rule," under which the taxpayer may elect to treat an entire property as satisfying the integral part requirement if 95% or more of the physical space of the property satisfies the requirement at the time the property is placed in service.[3] Presumably included to reduce conflicts between taxpayers and the IRS, this rule is welcome but insufficient to have its intended effect. • Given that most buildings have at least some ineligible space (e.g., offices, employee areas,	<u>Recommendation</u> In the forthcoming proposed regulations, Treasury and the IRS should materially lower the de minimis rule's 95% threshold or introduce an alternative rule that would reduce complexity for taxpayers and lead to less controversy in audits.

[1] Unless otherwise indicated, all textual references to "section" and "Treas. Reg. §" are to sections of the Internal Revenue Code of 1986, as amended ("Code"), and the Treasury Regulations promulgated thereunder, respectively.

[2] I.R.S. Notice 2026-16, § 4.02(1), 2026-11 I.R.B. 685, 687.

[3] *Id.* § 4.02(2), 2026-11 I.R.B. at 687.

	parking lots), the 95% threshold would be an extremely high bar to meet and would not provide much flexibility for taxpayers to satisfy the integral part requirement. • With respect to mixed-use facilities, trying to calculate this amount would require many taxpayers to rely on cost segregation studies or facts-and-circumstances analyses, adding undue complexity and audit risk.	
	<u>Special Rule for Integrated Facilities</u> As mentioned above, Notice 2026-16 provides a special rule for "multiple properties that operate as an integrated facility (as evidenced by their actual operation) and that are physically located or co-located on the same piece or contiguous pieces of land." Under this special rule, all properties comprising the integrated facility may be treated as a single unit of property solely for purposes of satisfying the integral part requirement.[4] The Chamber welcomes the introduction of a special rule for integrated facilities, which has the potential to simplify both the application and administration of section 168(n). To realize this potential, however, additional guidance is needed to clarify, inter alia: • what type of "evidence" is needed to support an "integrated facility" determination based on the facility's actual operations; and • the meaning and scope of "the same piece or contiguous pieces of land" requirement.	<u>Recommendations</u> In the forthcoming proposed regulations, Treasury and the IRS should clarify the type and quantum of "evidence" needed to support an "integrated facility" determination based on the facility's actual operations or simply remove the parenthetical evidentiary requirement altogether. Treasury and the IRS should also clarify that multiple parcels or tracts of land will be considered to be "the same piece or contiguous pieces of land" if they possess common boundaries and would otherwise be one contiguous property but for the interposition of a road, railroad, public utility, stream, or similar encumbrance.

[4] *Id.* § 4.03(2), 2026-11 I.R.B. at 687–88.

I.R.C. § 168(n)(2)(A)(v)	Beginning of Construction—Component Election	Recommendation
(2) QUALIFIED PRODUCTION PROPERTY.—For purposes of this subsection— (A) IN GENERAL.—The term 'qualified production property' means that portion of any nonresidential real property— * * * (v) the construction of which begins after January 19, 2025, and before January 1, 2029,	For purposes of determining whether property satisfies the statutory beginning-of-construction requirement in section 168(n)(2)(A)(v), Notice 2026-16 directs taxpayers to apply rules consistent with Treas. Reg. § 1.168(k)-2(b)(5)(iv)(B), including the safe harbor provided in Treas. Reg. § 1.168(k)-2(b)(5)(iv)(B)(2).[5] This reference to existing bonus depreciation regulations is a welcome clarification and allows taxpayers to rely on the well-established physical work test and 10% safe harbor to demonstrate that they have begun construction during the required statutory window. Unlike the existing bonus depreciation regulations, however, Notice 2026-16 is conspicuously silent on the applicability of section 168(n) to any acquired or self-constructed component of a larger self-constructed property. In general, Treas. Reg. § 1.168(k)-2(c)(1) allows a taxpayer to make an election to treat any acquired or self-constructed component of larger self-constructed property for which the taxpayer satisfies the statutory beginning-of-construction requirement as being eligible for 100% bonus depreciation under section 168(k), assuming all requirements of that section are otherwise met. In other words, this "component election" allows taxpayers to claim 100% bonus depreciation on specific components of a larger self-constructed asset, even where the overall project does not qualify for 100% bonus depreciation.	Given the explicit policy objectives of Congress in amending section 168 last year,[6] the Chamber strongly recommends that Treasury and the IRS incorporate the component election and related provisions of Treas. Reg. § 1.168(k)-2(c) into the forthcoming proposed regulations under new section 168(n). • Incorporating this election into the forthcoming proposed regulations would provide critical certainty to taxpayers that began construction on eligible multi-year projects before January 20, 2025, but acquired or self-constructed one or more components of such property after January 19, 2025, or are contemplating doing so.

[5] *Id.* § 4.05, 2026-11 I.R.B. at 688.

[6] *See, e.g.*, H. Comm. on the Budget, Rep. to Accompany H.R. 1, H.R. Rep. No. 119-106, pt. 2, at 1594 (2025) (explaining lawmakers' intent to strengthen U.S. industrial capacity, promote capital investment and modernization, and facilitate job creation).

I.R.C. § 168(n)(2)(C)	Ineligible Property	Recommendation
(2) QUALIFIED PRODUCTION PROPERTY.—For purposes of this subsection— * * * (C) EXCLUSION OF OFFICE SPACE, ETC.—The term 'qualified production property' shall not include that portion of any nonresidential real property which is used for offices, administrative services, lodging, parking, sales activities, research activities, software development or engineering activities, or other functions unrelated to the manufacturing, production, or refining of tangible personal property.	Notice 2026-16 effectively repeats the statutory exclusion in section 168(n)(2)(C) of ineligible property from the definition of QPP, including "any portion of property used for offices, administrative services, lodging, parking, sales activities, research activities, software development or engineering activities, or other functions unrelated to a QPA."[7] According to the notice, ineligible property also includes any property, or a portion thereof, that contains a manufacturing, production, or refining activity, or any other activity, that is not within the scope of the QPA definition, discussed below.[8] For many manufacturing activities (e.g., the production of aircraft), research and engineering activities are directly related and essential to the manufacturing process. In such cases, including engineers in the manufacturing line is critical to the manufacturing process itself and cannot reasonably support the underlying property's exclusion as ineligible property. For instance: • structural and testing engineers directly impact the manufacturing process through the on-demand problem solving and quality checks; • engineers develop technology in key areas like automation, smart manufacturing, human–robot collaboration, and technology enabled quality systems to enable breakthrough transformations throughout the manufacturing process.	In the forthcoming proposed regulations, Treasury and the IRS should affirmatively clarify that "ineligible property" for purposes of the exclusion in section 168(n)(2)(C) does not include any property used for research or engineering activities that are directly related to a QPA and integral to the underlying manufacturing, production, or refining process.

[7] I.R.S. Notice 2026-16, § 4.07(1), 2026-11 I.R.B. 685, 688.

[8] *See id.* § 4.07(2), 2026-11 I.R.B. at 688.

I.R.C. § 168(n)(2)(D)	Qualified Production Activity—Essential Activities	Recommendation
(2) QUALIFIED PRODUCTION PROPERTY.—For purposes of this subsection— * * * (D) QUALIFIED PRODUCTION ACTIVITY.—The term 'qualified production activity' means the manufacturing, production, or refining of a qualified product. The activities of any taxpayer do not constitute manufacturing, production, or refining of a qualified product unless the activities of such taxpayer result in a substantial transformation of the property comprising the product.	Notice 2026-16 effectively repeats the statutory definition in section 168(n)(2)(D) that the term QPA means the manufacturing, production, or refining of a qualified product, subject to the "substantial transformation" requirement discussed below.[9] Expanding on the statute, however, the notice explains that a QPA generally includes any manufacturing, production, or refining activity that does not result in a substantial transformation of the property comprising a qualified product if the activity is "essential" to the completion of the QPA."[10] For purposes of the preceding standard, the notice explains that the receiving and storage of raw materials or other inputs to be used or consumed during a QPA are activities essential to the QPA if they are conducted in, or take place within, the same property, or within the same integrated facility as the QPA.[11] Conversely, according to the notice, any other storage activity, such as the storage of finished products, is not an activity essential to a QPA.[12] This categorical exclusion of the storage of finished products from the scope of activities considered "essential" to the QPA is inappropriate in certain cases where, for example, without such storage, the substantial transformation of the property comprising the qualified product would	In the forthcoming proposed regulations, Treasury and the IRS should affirmatively recognize that the storage of finished products may be considered an activity essential to a QPA in certain circumstances (e.g., where such storage is necessary to maintain the intended quality of the qualified product). • Treasury and the IRS should also adopt conforming changes elsewhere in the forthcoming proposed regulations, as appropriate.[1]

[9] For example, the interim guidance in the notice describing "ineligible property" subject to the exclusion in section 168(n)(2)(C) includes a categorical statement that "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." *Id.* § 4.07(1), 2026-11 I.R.B. at 688. Treasury and the IRS should either omit or revise this guidance in the forthcoming proposed regulations.

[10] *Id.* § 5.01(2)(a), 2026-11 I.R.B. at 690. A manufacturing, production, or refining activity is "essential" to the completion of a QPA if, inter alia, without the activity, the substantial transformation of the property comprising the qualified product (A) cannot occur, (B) would result in an end product that is different in quality than the intended qualified product, or (C) would result in a quantity of qualified product that is different from the intended quantity. *Id.*

[11] *Id.* § 5.01(2)(b)(i), 2026-11 I.R.B. at 690–91.

[12] *Id.* § 5.01(2)(b)(ii), 2026-11 I.R.B. at 691.

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<td>result in an end product that differs in quality from the intended qualified product. For instance, certain batteries and pharmaceutical products require climate-controlled storage to preserve their efficacy. In other cases, storage of finished products may be required to:
• prevent corrosion of metal surfaces;
• maintain consistent humidity levels to reduce the risk of damage to certain surfaces or electronic components;
• prevent damage from insect or rodent infestation; or
• prevent contamination of certain products.</td>
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<td><u>Qualified Production Activity—Treatment of Remanufacturing</u>
Notice 2026-16 generally defines the term “manufacturing” to mean materially changing the form or function of tangible personal property, including parts and components, to create a new item of tangible personal property that is held for rent, lease, or sale to customers in the ordinary course of a trade or business.[13]

This definition is qualified by the aforementioned “substantial transformation” requirement in section 168(n)(2)(D), under which the activities of any taxpayer do not constitute manufacturing, production, or refining of a qualified product (QPA) unless the taxpayer’s activities result in a substantial transformation of the product. The notice defines “substantial transformation” for this purpose to mean the further manufacturing, production, or refining of the constituent elements, raw materials, inputs, or subcomponents into a final, complete, and distinct item of property in the hands of the taxpayer that is</td>
<td><u>Recommendations</u>
In the forthcoming proposed regulations, Treasury and the IRS should update the definition of “manufacturing” to affirmatively clarify that it includes processes in which a taxpayer receives used machinery or other core units and performs remanufacturing activities to produce items for rent, lease, or sale. And the updated definition should reference an inexhaustive list of such activities including, for example, complete or substantial disassembly, inspection and testing of components, re-machining, or reworking reusable parts, replacement of worn or obsolete parts, reassembly, and final calibration and testing.

Furthermore, Treasury and IRS should similarly update the definition of “substantial transformation” in the forthcoming proposed regulations to affirmatively include the reuse of selected housings, frames, castings, or other core components where the process results in a remanufactured product that is materially enhanced or the product’s economic</td>
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[13] *Id.* § 5.02(5), 2026-11 I.R.B. at 691.

	fundamentally different from the original constituent elements, materials, inputs, or subcomponents.[14] Many manufacturers undertake a process called "remanufacturing," which is a controlled industrial process that takes previously sold, leased, used, or non-functional products and restores them to the same or superior quality and performance as new ones. • From a plain reading of the notice, however, it is currently unclear whether such activities would constitute "manufacturing" for purposes of section 168(n). • It is also unclear whether the reuse of selected housings, frames, castings, or other core components would satisfy the "substantial transformation" requirement where the process results in a remanufactured product that is materially enhanced or where the product's economic useful life is extended for at least one additional year. Although remanufacturing uses old materials, businesses are transforming those parts into new equipment. The entire process is just as intensive (if not more so) than traditional manufacturing. Remanufacturing is not the same as recycling, repairing, or refurbishing; rather, remanufacturing activities include complete or substantial disassembly, inspection and testing of components, re-machining, or reworking reusable parts, replacement of worn or obsolete parts, reassembly, and final calibration and testing.	useful life is extended for at least one additional year.

[14] *Id.* § 5.02(9)(a), 2026-11 I.R.B. at 692.

	Qualified Production Activity—Manufacturing Products for Use in Further Manufacturing As set forth above, the notice generally defines the term "manufacturing" to mean materially changing the form or function of tangible personal property, including parts and components, to create a new item of tangible personal property that is *held for rent, lease, or sale to customers* in the ordinary course of a trade or business.[15] In certain manufacturing facilities, however, the new item of tangible personal property is not "held for rent, lease, or sale to customers" but rather used at a different facility to manufacture a larger qualified product.	Recommendation In the forthcoming proposed regulations, Treasury and the IRS should further update the definition of "manufacturing" to affirmatively contemplate a facility that creates a new item of tangible personal property that is used at a different facility as a component to manufacture a larger qualified product.
I.R.C. § 168(n)(7) (7) REGULATIONS.—The Secretary shall issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this subsection, including regulations or other guidance	Qualified Production Activity—Safe Harbor for Property Placed in Service During 2025 For property placed in service after July 4, 2025, and before January 1, 2026, the notice provides a welcome, practical safe harbor under which a taxpayer's trade-or-business activity conducted in the property will be treated as a QPA if: • the principal business activity code that the taxpayer, or the relevant trade or business of the taxpayer, used on its most recently filed Federal income tax return before February 19, 2026, is an applicable NAICS code listed the notice; and • the activity results in, or is otherwise essential to, the substantial transformation of the property comprising a qualified product.[16]	Recommendation In the forthcoming proposed regulations, Treasury and the IRS should consider exercising their regulatory authority to extend the availability of this temporary safe harbor to property placed in service after December 31, 2025. The simplicity and certainty offered by this temporary safe harbor based on applicable NAICS codes are significant and warrant further consideration.

[15] *Id.* § 5.02(5), 2026-11 I.R.B. at 691 (emphasis added).

[16] *Id.* § 5.03(1), 2026-11 I.R.B. at 692.