



TAX NEWS

Uncashed Retirement Distribution Check Is Still Taxable Income—IRS Rev. Rul. 2019-19 discusses the case of an employee who receives, but does not cash, a retirement distribution check. Does her failure to cash the check mean that the distribution is not taxable, or does her inaction relieve her employer of withholding and reporting (Form 1099-R) obligations? The ruling concludes that given these facts, there are no exceptions that relieve the employee from including the amount in income or that excuse the employer from withholding and reporting requirements. [Page 2](#)

IRS Provides Opportunity for a Limited Time to Change 2017 Bonus Depreciation Elections—A new revenue procedure gives taxpayers additional time to make or revoke bonus depreciation elections for the 2017 tax year. This procedure affects taxpayers who acquired qualifying property in the last few months of 2017. Due to the TCJA's changes to bonus depreciation, taxpayers may not have been aware that they had choices about claiming bonus depreciation when they filed their 2017 tax returns. [Page 2](#)

QUESTION OF THE WEEK

A client recently bought stock and plans to sell it soon after she receives the next dividend. She has received some conflicting information about whether the dividends will be qualified dividends. Does she have to hold the stock more than a year to get qualified dividend treatment? If not, what is the holding period for qualified dividends? [Page 4](#)

UNCASHED RETIREMENT DISTRIBUTION CHECK IS STILL TAXABLE INCOME

An IRS revenue ruling ([Rev. Rul. 2019-19](#)) concludes that a taxpayer's failure to cash a retirement distribution check does not permit her to exclude the amount from gross income.

The facts in the ruling concern an employee who receives a distribution from her employer's qualified retirement plan in 2019. The employer withheld required taxes and mailed a check to the employee who could, but did not cash the check.

The issues are:

- Does the employee's failure to cash the check permit her to exclude the amount from her 2019 gross income?
- Does her failure to cash the check alter her employer's withholding or reporting obligations?

The ruling states that a \$900 distribution is "required to be made," although it isn't clear if it is a required minimum distribution or made for some other reason. However, there are no exceptions that allow the employee to exclude the amount from gross income. She has no investment in the contract (which would make part of the distribution excludable) and she did not rollover any part of the distribution to another qualified plan or IRA. Her failure to cash the check she received in 2019 does not permit her to exclude the distribution from gross income for the year.

Generally, plan administrators must withhold 20% federal income tax withholding from 401(k) and other retirement plan distributions. Distributions must be reported to the IRS on Form 1099-R, *Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.* The employee's failure to cash the check does not relieve the employer from withholding or reporting obligations.

No explanation is offered as to why the employee would not cash the check during the year. The taxpayers may have raised hypothetical questions, perhaps thinking that if the employee holds onto the check she and the employer can defer their obligations to a future year, or there may be a unique set of circumstances behind the ruling. However, the ruling emphatically states: "For purposes of this revenue ruling, whether Individual A keeps the check, sends it back, destroys it, or cashes it in a subsequent year is irrelevant."

IRS PROVIDES OPPORTUNITY FOR A LIMITED TIME TO CHANGE 2017 BONUS DEPRECIATION ELECTIONS

Bonus depreciation and the TCJA

In general, bonus depreciation (aka the special depreciation allowance or additional first-year depreciation) allows a taxpayer to immediately deduct a specified percentage of the cost of qualifying property rather than depreciating it over several years. Bonus depreciation is the default deduction in years that it is available.

Taxpayers who don't wish to claim bonus depreciation may elect out by attaching a statement to a timely filed tax return (including extensions). The election applies to all property in the same class that is placed in service in the same tax year. The election may not be revoked without IRS consent.

The TCJA made several changes to the §168(k) bonus depreciation rules including:

- Increasing the bonus depreciation percentage to 100% for property acquired and placed in service after September 27, 2017.
- Extending the overall availability of bonus depreciation for an additional seven years, that is, from property placed in service before January 1, 2020 to property placed in service before January 1, 2027.

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- Allowing taxpayers to elect to deduct 50% rather than 100% bonus depreciation for property acquired by the taxpayer after September 27, 2017 and placed in service during a tax year that includes September 28, 2017.
- Expanding the definition of qualified property to include certain used depreciable property, certain film, television, and live theatrical productions. See the [instructions](#) to Form 4562 for the full list of qualified property.

Late elections

As so many TCJA provisions went into effect January 1, 2018, taxpayers may not have been aware of the TCJA bonus depreciation ramifications for property acquired and placed in service after September 27, 2017 but before the end of the taxpayer's 2017 tax year. For example, 100% bonus depreciation would automatically apply if a calendar year taxpayer bought and placed qualifying property in service October 1, 2017. The taxpayer may have preferred to elect out of bonus depreciation or, alternatively, to elect 50% bonus depreciation for the property. Ordinarily, the taxpayer would have to make those elections by the due date of the 2017 return, including extensions. Or, the taxpayer may have elected out of bonus depreciation and now wishes to claim it but could not do so without the IRS's consent.

Accordingly, [Rev. Proc. 2019-33](#) allows taxpayers to make late bonus depreciation elections (late §168(k) elections). All late elections apply to bonus depreciation for all qualified property in the same class acquired after September 27, 2017 and placed in service during the taxpayer's 2016 or 2017 tax year. Thus, late elections may apply to:

- Tax year 2017 for calendar year taxpayers.
- Fiscal years beginning October 1, 2016 through September 1, 2017 and ending September 30, 2017 through August 31, 2018 respectively.

Electing out of bonus depreciation under §168(k)(7)

A taxpayer that timely filed a 2016 or 2017 tax return and claimed 100% bonus depreciation (the default) may make a late §168(k)(7) election to opt out of bonus depreciation:

- By filing an amended return for the impacted 2016 or 2017 tax year if the taxpayer has not yet filed the return for the next succeeding tax year. For example, a calendar year taxpayer may file an amended return for 2017 if the taxpayer has not yet filed the tax return for 2018. The amended return must include the adjustment to taxable income caused by the late election and any collateral adjustments to taxable income or tax liability. *Note:* under the CPAR rules, partnerships must make an administrative adjustment request (AAR).
- By filing Form 3115 with the taxpayer's first, second, or third succeeding tax year. For example, to make a late election for calendar year 2017 the taxpayer could file Form 3115 with a 2018, 2019, or 2020 return. The late §168(k)(7) election will be treated as a change in accounting method with a §481(a) adjustment.

Electing 50% bonus depreciation under §168(k)(10)

Similarly, a taxpayer that timely filed a 2016 or 2017 tax return and claimed 100% bonus depreciation may make a late §168(k)(10) election to instead claim 50% bonus depreciation. The taxpayer does so by filing an amended return or AAR with the necessary adjustments if the return for the next succeeding tax year has not yet been filed or by filing Form 3115 with a §481(a) adjustment with the taxpayer's first, second, or third succeeding tax year.

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Revoking §168(k)(7) and §168(k)(10) elections.

For taxpayers who previously made an election either to opt out of bonus depreciation or to claim 50% bonus depreciation on a timely filed 2016 or 2017 return, the taxpayer may revoke these elections by filing an amended return or AAR with the necessary adjustments if the return for the next succeeding tax year had not yet been filed or by filing Form 3115 with a §481(a) adjustment with the taxpayer's first, second, or third succeeding tax year.

Elections for specified plants under §168(k)(5)

The ability to make or revoke elections applies as well to specified plants that are planted or grafted after September 27, 2017 and during the taxpayer's 2016 or 2017 tax year. See Section 4 of the revenue procedure.

Scope and effective date

Making a late election or revoking an election under this revenue procedure is treated as a change in method of accounting and automatic change procedures apply. The designated change number (DCN) for these changes is 241. See "[How does a taxpayer file for automatic consent to a change in method of accounting?](#)" for the proper procedures to follow.

It bears repeating that this special treatment applies only to property acquired after September 27, 2017 and placed in service in a calendar or fiscal year that includes September 28, 2017. The election or revocation must be made in the taxpayer's first, second, or third tax year succeeding the impacted tax year.

Rev. Proc. 2019-33 is effective July 31, 2019.

QUESTION OF THE WEEK

Q. A client bought some stock late in June and expects to sell it soon after it pays out the next dividend, which should be mid-September. She knows that the gain on the sale of stock will be short-term capital gain. Her question is about whether the dividend will be a qualified dividend for her. She has received conflicting information from various sources.

One person told her that she needs to hold the stock more than a year for the dividends to be qualified dividends. Another told her that as long as she is the holder of record and eligible for the dividends, they'll be qualified dividends. The stock is domestic common stock.

How long must the client hold the stock for the September dividends to be qualified dividends?

A. The time frames you've mentioned are important ones for investors to understand but they do not determine if dividends are qualified or not.

Stock and other securities must be held more than a year to receive long-term capital gain treatment. And the record date (aka date of record), a date by which investors must be on the company's books, is part of what determines an investor's eligibility for dividends.

When the board of directors of a corporation declares a dividend, the board sets a record date. The ex-dividend date (aka ex-date or reinvestment date) is one business day before the record date. On or after the ex-dividend date, a new buyer of the stock is not entitled to receive the next dividend.

For dividends to receive qualified dividend treatment however, the investor must meet a holding period requirement with respect to the stock that paid the dividends. Generally, for common stock, the investor must hold the shares more than 60 days during the 121-day period that began 60 days before the ex-dividend date.

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Applying this information to the qualified dividend holding period, suppose the record date for this company's next dividend is August 30 and the ex-dividend date would therefore be August 29. The first day of the qualified dividend holding period for common stock would be June 30 (60 days before the ex-dividend date) and the last day would be October 29 (121 days after the first day of the holding period).

If your client sells her shares prior to meeting the holding period requirement, the dividends she receives will not be eligible for qualified dividend treatment and so will be taxed as ordinary income.

Most regular dividends from U.S. corporations can be qualified dividends if the holding periods are met. See ["What is qualified dividend income?"](#) in the Tax Research Center for more information.