

IRM PROCEDURAL UPDATE

DATE: 06/27/2016

NUMBER: wi-21-0616-1146

SUBJECT: Protecting Americans Tax Hikes Act, P.L. 114-113

AFFECTED IRM(S)/SUBSECTION(S): 21.7.4

CHANGE(S):

IRM 21.7.4.4.18.6.6 Added new subsection titled: Protecting Americans From Tax Hikes Act of 2015, P.L. 114-113, 50 percent Additional Special Depreciation.

1. Taxpayers recover through annual depreciation deductions, the cost of certain property used in a trade or business, or for the production of income. Section 103 of the Economic Stimulus Act of 2008, P.L. 110-185, amended IRC section 168(k) to allow for a nationwide additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified property.
2. The adjusted basis of the qualified property shall be reduced by the amount of the additional first-year depreciation deduction before computing the amount of regular depreciation deduction. This additional first-year depreciation deduction is allowed for both regular and alternative minimum tax for the taxable year in which the property is placed in service.
3. Section 143(a)(1) of the Protecting Americans From Tax Hikes Act of 2015, enacted as part of the Consolidated Appropriations Act, 2016, Division Q, P.L. 114-113, extended the 50 percent additional first-year depreciation deduction for qualified property for one year.
4. In general, "qualified property" means depreciable property:
 - To which IRC section 168 applies which has a recovery period of 20 years or less,
 - Which is computer software (as defined in IRC section 167(f)(1)(B)), for which a deduction is allowable under IRC section 167(a) without regards to IRC section 168(k),
 - Which is water utility property, or
 - Which is qualified leasehold improvement property.
5. The original use of the qualified property must commence with the taxpayer after December 31, 2007, and the qualified property must be acquired by the taxpayer:

- After December 31, 2007, and before January 1, 2016, but only if no written binding contract for the acquisition is in effect before January 1, 2008, or
 - Pursuant to a written binding contract which was entered into after December 31, 2007, and before January 1, 2016.
6. The qualified property must be placed in service by the taxpayer before January 1, 2016, or in the case of property described in IRC section 168(k)(2)(B) or in IRC section 168(k)(2)(C), before January 1, 2017.
 7. In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the taxpayer must begin the manufacture, construction, or production of the property after December 31, 2007, and before January 1, 2016, to meet the acquisition requirements in paragraph (5) directly above. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered manufactured, constructed, or produced by the taxpayer.
 8. The additional first-year depreciation deduction is claimed on Form 4562, Depreciation and Amortization. Follow normal procedures for verifying claims as described in IRM 21.5.3, General Claim Procedures, and follow Exhibit 21.5.3-2 for CAT-A criteria.
 9. Action required:
 - Math verify Form 4562
 - Input TC 290 to increase tax or TC 291 to decrease tax.

IRM 21.7.4.4.18.6.7 Added new subsection titled: Protecting Americans From Tax Hikes Act of 2015, P.L. 114-113, 50 percent Additional Special Depreciation Deduction for Qualified Property for 2016 Through 2019.

1. Section 143(b)(1) of the Protecting Americans From Tax Hikes Act of 2015 (the Act), enacted as part of the Consolidated Appropriations Act, 2016, Division Q, P.L. 114-113, extended and modified the 50 percent additional first-year depreciation deduction for qualified property for 2016 through 2019. Section 143(b)(1) of the Act amends IRC section 168(k)(2) as follows for property placed in service after December 31, 2015, in taxable years ending after such date.
2. In general the term 'qualified property' means depreciable property:
 - to which IRC section 168 applies which has a recovery period of 20 years or less,
 - which is computer software (as defined in IRC section 167(f)(1)(B)) for which a deduction is allowable under IRC section 167(a) without regard to IRC section 168(k),

- which is water utility property, or (iv) which is qualified improvement property,
 - the original use of which commences with the taxpayer, and
 - which is placed in service by the taxpayer before January 1, 2020.
3. In addition, "qualified property" includes certain depreciable property having longer production periods if the property:
- meets the requirements of the 1st and 2nd bullets in paragraph (2) directly above,
 - is placed in service by the taxpayer before January 1, 2021,
 - is acquired by the taxpayer (or acquired pursuant to a written contract entered into) before January 1, 2020,
 - has a recovery period of at least 10 years or is transportation property (as defined in IRC section 168(k)(2)(B)(iii) and (iv)), and
 - is subject to IRC section 263A, and
 - meets the requirements of clause (iii) of IRC section 263A(f)(1)(B) (determined as if such clause also applies to property which has a long useful life (within the meaning of IRC section 263A(f))).
4. In the case of qualified property described in paragraph (3) directly above, the additional first-year depreciation deduction shall apply only to the extent of the adjusted basis thereof attributable to manufacture, construction, or production before January 1, 2020.
5. In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the acquisition requirements in the 3rd bullet in the paragraph (3) directly above shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property before January 1, 2020.
6. See section 143(b)(1) of the Act for more information on certain aircraft property, the exception for alternative depreciation property, special rules, and coordination with IRC section 280F. See section 143(b)(6)(D) of the Act for information on the election not to deduct the additional first-year depreciation.
7. Section 143(b)(2) of the Act amends IRC 168(k)(3), Qualified Improvement Property, for property placed in service after December 31, 2015, in taxable years ending after such date. In general, the term "qualified improvement property" means:
- Any improvement to an interior portion of a building which is nonresidential real property if such improvement is placed in service after the date such building was first placed in service.
 - Such term shall not include any improvement for which the expenditure is attributable to (i) the enlargement of the building, (ii) any elevator or escalator, or (iii) the internal structural framework of the building.

8. Section 143(b)(4) of the Act amends IRC section 168(k)(5). The "Special Rule for Property Acquired During Certain Pre-2012 Periods" has been deleted and replaced by "Special Rules for Certain Plants Bearing Fruits and Nuts." In general, in the case of any "specified plant" which is planted before January 1, 2020, or is grafted before such date to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business (as defined in IRC section 263A(e)(4)) during a taxable year for which the taxpayer has elected the application of IRC section 168(k)(5), the taxpayer may elect a depreciation deduction equal to 50 percent of the adjusted basis of such specified plant shall be allowed under IRC section 167(a) for the taxable year in which such specified plant is so planted or grafted, and (ii) the adjusted basis of such specified plant shall be reduced by the amount of such deduction. This 50 percent additional first-year depreciation deduction is reduced to 40 percent for a plant which is planted (or so grafted) in 2018 and 30 percent in the case of a plant which is planted (or so grafted) in 2019. IRC section 168(k)(5), as amended by the Act, applies to specified plants planted or grafted after December 31, 2015.
9. For purposes of paragraph (8) directly above, the term "specified plant" means any:
 - o tree or vine which bears fruit or nuts, and
 - o other plant which will have more than one yield of fruits or nuts and which generally has a pre-productive period of more than 2 years from the time of planting or grafting to the time at which such plant begins bearing fruits or nuts.
10. For purposes of paragraph (8) directly above, the term "specified plant" does not include any property which is planted or grafted outside the United States.
11. Section 143(b)(5) of the Act adds new IRC section 168(k)(6), Phase Down, to the Internal Revenue Code. The 50 percent additional first-year depreciation deduction is reduced to:
 - o 40 percent in the case of property placed in service in 2018 (or in the case of property placed in service in 2019 and described in IRC section 168(k)(2)(B) or 168(k)(2)(C) (determined by substituting "2019" for "2020" in IRC section 168(k)(2)(B)(i)(III) and (ii) and IRC section 168(k)(2)(E)(i)).
 - o 30 percent in the case of property placed in service in 2019 (or in the case of property placed in service in 2020 and described in IRC section 168(k)(2)(B) or 168(k)(2)(C)).
12. Section 143(b)(6)(A) of the Act amends IRC section 168(e)(6) for property placed in service after December 31, 2015, in taxable years ending after such date. In general the term "qualified leasehold improvement property" for purposes of IRC section 168(e)(6) means any improvement to an interior portion of a building which is nonresidential real property if:

- such improvement is made under or pursuant to a lease (as defined in IRC section 168 (h)(7))(I) by the lessee (or any sublessee) of such portion, or (II) by the lessor of such portion,
 - such portion is to be occupied exclusively by the lessee (or any sublessee) of such portion, and
 - such improvement is placed in service more than 3 years after the date the building was first placed in service.
13. For purposes of paragraph (12) directly above, the term “qualified leasehold improvement property” shall not include any improvements for which the expenditure is attributable to:
- the enlargement of the building,
 - any elevator or escalator,
 - any structural component benefitting a common area, or
 - the internal structural framework of the building.
14. See IRC section 168(e)(6)(C), as amended by section 143(b)(B)(A) of the Act, for more information on definitions and special rules relating to qualified leasehold improvement property.
15. The additional first-year depreciation deduction is claimed on Form 4562, Depreciation and Amortization. Follow normal procedures for verifying claims as described in IRM 21.5.3, General Claim Procedures, and follow Exhibit 21.5.3-2 for CAT-A criteria.
16. Action required:
- Math verify Form 4562
 - Input TC 290 to increase tax or TC 291 to decrease tax.

IRM 21.7.4.4.18.10.5 Added new subsection: Protecting Americans From Tax Hikes Act of 2015, P.L. 114-113, Extension of Election to Accelerate the Alternative Minimum Tax Credit in Lieu of Bonus Depreciation.

1. Section 143(a)(3) of the Protecting Americans From Tax Hikes Act of 2015 (the Act), enacted as part of the Consolidated Appropriations Act, 2016, Division Q, P.L. 114-113, extended for one year the election to accelerate the unused alternative minimum tax (AMT) credit carryforwards from tax years beginning before 2006 and obtain a refundable credit in lieu of bonus depreciation. In general, the provision provides for corporations to elect not to claim the 50 percent additional first-year depreciation for “eligible qualified property” (defined in IRM 21.7.4.4.18.6.6) acquired after March 31, 2008, and placed in service after December 31, 2014, and before January 1, 2016 (or placed in service after December 31, 2015, and before January 1, 2017, for certain property having longer production periods as described in IRC section 168(k)(2)(B) and also for certain aircraft as described in IRC section 168(k)(2)(C)), and instead, to increase their AMT credit limitation. Section

143(a)(3) of the Act refers to this eligible qualified property as round 5 extension property.

2. Section 143(a)(3) of the Act added new IRC section 168(k)(4)(L) to provide special rules for round 5 extension property. In general, new IRC section 168(k)(4)(L)(i)(I) provides that in the case of round 5 extension property, the limitation described in IRC section 168(k)(4)(B)(i) and the business credit increase amount under IRC section 168(k)(4)(E)(iii) thereof shall not apply.
3. A taxpayer who has an election for round 4 extension property shall be treated as having an election in effect for round 5 extension property unless, under new IRC section 168(k)(4)(L)(ii)(I), the taxpayer elects not to have IRC section 168(k)(4) apply to round 5 extension property.
4. Under new IRC section 168(k)(4)(L)(ii)(II), a taxpayer who does not have an election in effect for round 4 extension property may elect to apply IRC section 168(k)(4) to round 5 extension property. If the taxpayer makes the election under new IRC section 168(k)(4)(L)(ii)(II), IRC section 168(k)(4) applies only to eligible qualified property that is round 5 extension property.
5. In applying IRC section 168(k)(4) to eligible qualified property that is round 5 extension property, taxpayers do not claim the 50 percent additional first-year depreciation under IRC section 168(k) and instead, use the straight line method of depreciation for eligible qualified property that is round 5 extension property and increase their pre-2006 minimum tax credit limitation. Also, under new IRC section 168(k)(4)(L)(i)(II), the bonus depreciation amount, maximum amount, and maximum increase amount shall be computed and applied to eligible qualified property which is round 5 extension property. These amounts shall be computed separately from any amounts computed with respect to eligible qualified property which is not round 5 extension property.
6. See IRC section 168(k)(4)(C) for computing the bonus depreciation amount, maximum amount, and maximum increase amount.
7. If an amended return is received, or a taxpayer did not receive the proper credit on their original return, take the following action:
 - Input TC 290 \$.00 and TC 766 with a positive amount to allow/increase the credit, **or**
 - Input TC 290 \$.00 and TC 767 with a negative amount to decrease the credit
 - Input a TC 971 action code 300 to the tax module via CC FRM77 whenever the credit is adjusted. Input the dollar amount in the FREEZERELEASE-MEMO-AMT field. The transaction date will self-populate with the current date. Money amounts must be positive or negative. Zeros are not allowed.

IRM 21.7.4.4.18.10.5.1 Add new subsection: Protecting Americans From Tax Hikes Act of 2015, P.L. 114-113, Extension of Election to Accelerate the Alternative Minimum Tax Credit in Lieu of Bonus Depreciation for 2016 through 2019.

1. Section 143(b)(3) of the Protecting Americans From Tax Hikes Act of 2015 (the Act), enacted as part of the Consolidated Appropriations Act, 2016, Division Q, P.L. 114-113, extended and modified the election to accelerate the alternative minimum tax credit in lieu of bonus depreciation for 2016 through 2019. Section 143(b)(3) of the Act amends IRC section 168(k)(4) as follows for taxable years ending after December 31, 2015.
2. In general, IRC section 168(k)(4) provides for corporations to elect not to claim the 50 percent additional first-year depreciation for qualified property and instead, increase their minimum tax credit limitation and obtain a refundable credit. In general, under IRC section 168(k)(4)(A), if a corporation elects to apply IRC section 168(k)(4) for any taxable year:
 - IRC section 168(k)(1) and IRC section 168(k)(2)(F) shall not apply to any qualified property placed in service during such taxable year,
 - the applicable depreciation method used under IRC section 168 with respect to such property shall be the straight line method, and
 - the limitation imposed by IRC section 53(c) for such taxable year shall be increased by the bonus depreciation amount which is determined for such taxable year under IRC section 168(k)(4)(B).
3. See IRM 21.7.4.4.18.6.7, Protecting Americans From Tax Hikes Act of 2015, P.L. 114-113, 50 percent Additional Special Depreciation for Qualified Property for 2016 Through 2019, for the property that qualifies as “Qualified Property” under IRC section 168(k)(2).
4. See IRC section 168(k)(4)(B) through IRC section 168(k)(4)(D) for information on the bonus depreciation amount, credit refundable, and other rules.
5. If an amended return is received, or a taxpayer did not receive the proper credit on their original return, take the following action:
 - Input TC 290 \$.00 and TC 766 with a positive amount to allow/increase the credit, **or**
 - Input TC 290 \$.00 and TC 767 with a negative amount to decrease the credit
 - Input a TC 971 action code 300 to the tax module via CC FRM77 whenever the credit is adjusted. Input the dollar amount in the FREEZERELEASE-MEMO-AMT field. The transaction date will self-populate with the current date. Money amounts must be positive or negative. Zeros are not allowed.