

26 CFR 1.179-5: Time and manner of making election.
(Also Part 1, §§ 168, 446; 1.168(i)-4, 1.446-1.)

Rev. Proc. 2019-08

SECTION 1. PURPOSE

This revenue procedure provides guidance under §§ 13101(b), 13204(a)(3), and 13205 of the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017) (the “TCJA”). Section 13101(b) of the TCJA amended § 179 of the Internal Revenue Code by modifying the definition of qualified real property that may be eligible as § 179 property under § 179(d)(1). Section 13204(a)(3) of the TCJA amended § 168 by (i) requiring certain property held by an electing real property trade or business, as defined in § 163(j)(7)(B), to be depreciated under the alternative depreciation system in § 168(g), and (ii) changing the recovery period under the alternative depreciation system from 40 to 30 years for residential rental property. Section 13205 of the TCJA amended § 168 by requiring certain property held by an electing farming business, as defined in § 163(j)(7)(C), to be depreciated under the alternative depreciation system. This revenue procedure also modifies Rev. Proc. 87-57, 1987-2 C.B. 687, to provide an optional depreciation table for residential rental property depreciated under the alternative depreciation system with a 30-year recovery period, and Rev. Proc. 2018-31, 2018-22 I.R.B. 637, to provide guidance for calculating a § 481(a) adjustment for a

change in method of accounting due to a change in the use of depreciable tangible property.

SECTION 2. BACKGROUND

.01 Modifications to § 179.

(1) Section 179(a) allows a taxpayer to elect to treat the cost (or a portion of the cost) of any § 179 property as an expense for the taxable year in which the taxpayer places the property in service. Sections 179(b)(1) and (2) prescribe a dollar limitation on the aggregate cost of § 179 property that can be treated as an expense under § 179(a). The dollar limitation is the amount under § 179(b)(1) (the § 179(b)(1) limitation), reduced (but not below zero) by the amount by which the cost of § 179 property placed in service during the taxable year exceeds the amount under § 179(b)(2) (the § 179(b)(2) limitation). For taxable years beginning after 2017, the § 179(b)(1) limitation is \$1,000,000 and the § 179(b)(2) limitation is \$2,500,000. Pursuant to § 179(b)(6), these limitation amounts are adjusted for inflation for taxable years beginning after 2018. For taxable years beginning in 2019, section 3.26 of Rev. Proc. 2018-57, 2018-49 I.R.B. 827, provides that the § 179(b)(1) limitation is \$1,020,000 and the § 179(b)(2) limitation is \$2,550,000.

(2) Section 179(b)(3)(A) provides that a taxpayer's § 179 deduction for any taxable year, after application of the § 179(b)(1) and (2) limitations, is limited to the taxpayer's taxable income for that taxable year that is derived from the taxpayer's active conduct of any trade or business during that taxable year (taxable income limitation). Section 179(b)(3)(B) provides that the amount of any cost of § 179 property elected to be expensed in a taxable year that is disallowed as a § 179 deduction under the taxable

income limitation may be carried forward for an unlimited number of years and may be deducted under § 179(a) in a future year, subject to the same limitations.

(3) Section 179(c) provides the rules for making and revoking elections under § 179 (“§ 179 election”). Pursuant to § 179(c)(1), a § 179 election is made in the manner prescribed by regulations. Section 1.179-5(c)(1) of the Income Tax Regulations provides the manner for making or revoking a § 179 election for any taxable year beginning after 2002 and before 2008. Section 1.179-5(c) was promulgated in 2005 and has not been amended to reflect subsequent amendments to § 179(c). However, in 2017, the Treasury Department and the IRS issued Rev. Proc. 2017-33, 2017-19 I.R.B. 1236. Section 3.02 of Rev. Proc. 2017-33 provides that for a taxable year beginning after 2014, the taxpayer will be permitted to make a § 179 election for any § 179 property without the Commissioner’s consent on an amended federal tax return for the taxable year in which the taxpayer places in service the § 179 property. Section 3.02 of Rev. Proc. 2017-33 further provides that until § 1.179-5(c) is amended to incorporate this guidance, taxpayers may rely on such guidance.

(4) Section 179(d) defines the term “§ 179 property.” Prior to amendment by the TCJA, § 179(d)(1) defined § 179 property as property that is: (A)(i) tangible property to which § 168 applies, or (ii) computer software, as defined in § 197(e)(3)(B), that is described in § 197(e)(3)(A)(i) and to which § 167 applies; (B) § 1245 property as defined in § 1245(a)(3); and (C) acquired by purchase for use in the active conduct of a trade or business. Prior to amendment by the TCJA, § 179(d)(1) further provided that § 179 property does not include any property described in § 50(b).

Section 13101(b)(1) of the TCJA amended § 179(d)(1)(B) to provide that if the taxpayer elects, § 179 property may include qualified real property as defined in § 179(f). Section 13101(c) of the TCJA also amended the flush language in § 179(d)(1) to allow property used predominantly to furnish lodging or in connection with the furnishing of lodging as described in § 50(b)(2) to be § 179 property. These amendments apply to property placed in service in taxable years beginning after December 31, 2017.

(5) Prior to amendment by the TCJA, § 179(f)(1) provided that § 179 property included qualified real property if the taxpayer elected the application of § 179(f) for the taxable year, and § 179(f)(2) defined “qualified real property” as meaning qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property described in § 168(e)(6), (7), and (8), respectively, as in effect on the day before the date of the enactment of the TCJA. Section 13101(b)(2) of the TCJA amended § 179(f) by defining qualified real property as (1) any qualified improvement property described in § 168(e)(6) and (2) any of the following improvements to nonresidential real property placed in service after the date such property was first placed in service: roofs; heating, ventilation, and air-conditioning property; fire protection and alarm systems; and security systems. These amendments apply to property placed in service in taxable years beginning after December 31, 2017.

Some taxpayers have inquired as to whether the election to treat qualified real property as § 179 property is made in accordance with the § 179 election procedures in § 1.179-5(c) or the procedures in Notice 2013-59, 2013-40 I.R.B. 297, for electing the

application of former § 179(f)(1). Section 3 of this revenue procedure addresses this issue.

(6) Section 401(b)(15)(A) of the Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Div. U, Title IV, 132 Stat. 348 (Mar. 23, 2018) (the “2018 Act”), removed § 179(e), which provided special rules for qualified disaster assistance property, and redesignated § 179(f) as § 179(e).

.02 Modifications to § 168(g).

(1) Prior to amendment by the TCJA, § 168(g)(1) provided that the depreciation deduction provided by § 167(a) is determined under the alternative depreciation system for: (A) any tangible property that during the taxable year is used predominantly outside the United States; (B) any tax-exempt use property; (C) any tax-exempt bond financed property; (D) any imported property covered by an Executive order under § 168(g)(6); and (E) any property to which an election under § 168(g)(7) applies. Sections 13204(a)(3)(A)(i) and 13205(a) of the TCJA amended § 168(g)(1) by requiring the depreciation deduction provided by § 167(a) to be determined under the alternative depreciation system for the following additional property: nonresidential real property, residential rental property, and qualified improvement property held by an electing real property trade or business as defined in § 163(j)(7)(B); and any property with a recovery period of 10 years or more that is held by an electing farming business as defined in § 163(j)(7)(C). These amendments apply to taxable years beginning after December 31, 2017, without regard to when the property is or was placed in service.

Some taxpayers that are electing real property trades or businesses or electing farming businesses have inquired about how depreciation is changed from the general

depreciation system under § 168(a) to the alternative depreciation system under § 168(g) for property placed in service in taxable years beginning before 2018. Section 4 of this revenue procedure addresses this issue.

(2) Prior to amendment by the TCJA, the table of recovery periods under § 168(g)(2)(C) provided that the recovery period was 40 years for residential rental property. Section 13204(a)(3)(C) of the TCJA amended that table by providing that the recovery period is 30 years for residential rental property. This amendment applies to property placed in service after December 31, 2017.

Some taxpayers have inquired whether residential rental property placed in service before 2018 has a recovery period of 30 or 40 years under the alternative depreciation system. Section 4 of this revenue procedure addresses this issue.

.03 Optional depreciation table under the alternative depreciation system for residential rental property placed in service after 2017. Rev. Proc. 87-57 provides guidance for computing depreciation deductions for tangible property under § 168. Sections 2-7 of Rev. Proc. 87-57 prescribe the manner of computing such depreciation deductions. Section 8 of Rev. Proc. 87-57 contains optional depreciation tables that may be used by certain taxpayers in lieu of computing depreciation deductions in the manner described in sections 2-7 of Rev. Proc. 87-57.

Section 8.01 of Rev. Proc. 87-57 provides that the optional depreciation tables may be used for any item of property placed in service in a taxable year. For all items of property placed in service in a taxable year for which the optional depreciation tables are not used, depreciation deductions must be computed in the manner prescribed in sections 2-7 of Rev. Proc. 87-57.

Section 8.02 of Rev. Proc. 87-57 provides that the optional depreciation tables specify schedules of annual depreciation rates to be applied to the unadjusted basis of the property in each taxable year. If a taxpayer uses an optional depreciation table to compute the annual depreciation deduction for any item of property, the taxpayer must use the table to compute the annual depreciation deductions for the entire recovery period of such property. However, a taxpayer may not continue to use the table if there are any adjustments to the basis of such item of property for reasons other than (1) depreciation allowed or allowable, or (2) an addition or an improvement to such property that is subject to depreciation as a separate item of property. Use of the optional depreciation tables to compute depreciation deductions does not require the filing of any notice with the Internal Revenue Service (IRS).

The IRS has not previously published an optional table for property depreciated under the alternative depreciation system with a recovery period of 30 years and the mid-month convention. Some taxpayers have requested the IRS to provide an optional depreciation table for residential rental property that is placed in service after December 31, 2017, and depreciated under the alternative depreciation system of § 168(g) using the straight-line method, the new 30-year recovery period required by the TCJA, and the mid-month convention. This table is provided in section 4 of this revenue procedure.

.04 Subsequent References. Unless otherwise specifically stated, all references in the subsequent sections of this revenue procedure to § 168(g) are to § 168(g) as in effect after the enactment of the TCJA and to § 179 are to § 179 as in effect after the enactment of the 2018 Act.

SECTION 3. QUALIFIED REAL PROPERTY UNDER § 179

.01 Definition.

(1) Taxable year beginning after 2017. For property placed in service by the taxpayer in any taxable year beginning after 2017, the following types of property are qualified real property that may be eligible as § 179 property under § 179(d)(1):

(a) Qualified improvement property, as described in § 168(e)(6), that is placed in service by the taxpayer. The definition of qualified improvement property in § 168(e)(6) is the same definition of that term in § 168(k)(3) as in effect on the day before the date of enactment of the TCJA. Accordingly, see section 4.02 of Rev. Proc. 2017-33 for further guidance on the definition of qualified improvement property; and

(b) An improvement to nonresidential real property, as defined in § 168(e)(2)(B), if the improvement:

(i) Is placed in service by the taxpayer after the date such nonresidential real property was first placed in service by any person;

(ii) Is § 1250 property; and

(iii) Is:

(A) A roof;

(B) Heating, ventilation, and air-conditioning property (HVAC). A central HVAC system includes all components that are in, on, or adjacent to the nonresidential real property. See § 1.48-1(e)(2);

(C) A fire protection and alarm system; or

(D) A security system.

(2) Taxable year beginning in 2017 and ending in 2018. For property placed in service by the taxpayer in a taxable year beginning in 2017 and ending in 2018, qualified real property is qualified leasehold improvement property, qualified restaurant property, or qualified retail improvement property as described in § 179(f)(1) and (2) as in effect on the day before the date of enactment of the TCJA. Qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property are defined in § 168(e)(6), (e)(7), and (e)(8), respectively, as in effect on the day before the date of the enactment of the TCJA.

.02 Election to Treat Qualified Real Property as § 179 Property. A taxpayer may elect to expense under § 179(a) the cost, or a portion of the cost, of qualified real property placed in service by the taxpayer during any taxable year beginning after 2017 by filing an original or amended Federal tax return for that taxable year in accordance with procedures similar to those in § 1.179-5(c)(2) and section 3.02 of Rev. Proc. 2017-33. If a taxpayer elects or elected to expense under § 179(a) a portion of the cost of qualified real property placed in service by the taxpayer during any taxable year beginning after 2017, the taxpayer is permitted to increase the portion of the cost of such property expensed under § 179(a) by filing an amended Federal tax return for that taxable year. Any such increase in the amount expensed under § 179 is not deemed to be a revocation of the prior election for that taxable year.

SECTION 4. ALTERNATIVE DEPRECIATION SYSTEM UNDER § 168(g)

.01 Recovery period of residential rental property.

(1) In general. The recovery period under the table in § 168(g)(2)(C) is 30 years for residential rental property placed in service by the taxpayer after December

31, 2017, and is 40 years for residential rental property placed in service by the taxpayer before January 1, 2018.

(2) Optional depreciation table. Below is the optional depreciation table for residential rental property placed in service by the taxpayer after December 31, 2017, and depreciated by the taxpayer under the alternative depreciation system of § 168(g) using the straight-line method, a 30-year recovery period, and the mid-month convention.

	1	2	3	4	5	6	7	8	9	10	11	12
Year												
1	3.204%	2.926%	2.649%	2.371%	2.093%	1.815%	1.528%	1.250%	0.972%	0.694%	0.417%	0.139%
2-30	3.333%	3.333%	3.333%	3.333%	3.333%	3.333%	3.333%	3.333%	3.333%	3.333%	3.333%	3.333%
31	0.139%	0.417%	0.694%	0.972%	1.250%	1.528%	1.815%	2.093%	2.371%	2.649%	2.926%	3.204%

Table—Alternative Depreciation System
Method: Straight line
Convention: Mid-month
Recovery period: 30 years

Month in the 1st recovery year the property is placed in service

.02 Electing real property trade or business or electing farming business.

(1) In general. Section 168(g)(1)(F) and (G) provide that the depreciation deduction provided by § 167(a) must be determined in accordance with the alternative depreciation system in § 168(g) for the following types of MACRS property (as defined in § 1.168(b)-1(a)(2)):

(a) Any nonresidential real property (as defined in § 168(e)(2)(B)), residential rental property (as defined in § 168(e)(2)(A)), and qualified improvement property (as defined in § 168(e)(6)) held by an electing real property trade or business (as defined in § 163(j)(7)(B) and the regulations thereunder); and

(b) Any property with a recovery period of 10 years or more that is held by an electing farming business (as defined in § 163(j)(7)(C) and the regulations thereunder). For determining what MACRS property has a recovery period of 10 years or more, the recovery period is determined in accordance with § 168(c).

(2) Changing depreciation of property to the alternative depreciation system.

(a) In general. For the first taxable year for which an electing real property trade or business or an electing farming business makes an election under § 163(j)(7)(B) or (C), respectively, and the regulations thereunder (the “election year”), that trade or business must begin depreciating the properties described in section 4.02(1) of this revenue procedure, as applicable, in accordance with the alternative depreciation system in § 168(g). The preceding sentence applies to such property placed in service by the trade or business in taxable years beginning before the election year (“existing property”) and such property placed in service by the trade or business in the election year and subsequent taxable years (“newly-acquired property”).

(b) Existing property. For existing property described in section 4.02(1) of this revenue procedure, as applicable, a change in use occurs under § 168(i)(5) and § 1.168(i)-4(d) for the election year as a result of the election under § 163(j)(7)(B) or (C), as applicable. Accordingly, depreciation for such property beginning for the election year is determined in accordance with § 1.168(i)-4(d). Pursuant to § 1.168(i)-4(f), a change in computing depreciation for the election year for such existing property is not a change in method of accounting under § 446(e). If any such existing property was qualified property under § 168(k) in the taxable year in which the trade or business

placed the property in service, the additional first year depreciation deduction allowable for that property is not redetermined. See § 1.168(k)-1(f)(6)(iv)(A).

(c) Newly-acquired property. For newly-acquired property described in section 4.02(1) of this revenue procedure, as applicable, the taxpayer determines the depreciation in accordance with the alternative depreciation system for such property for its placed-in-service year and the subsequent taxable years. Because such newly-acquired property is required to be depreciated under the alternative depreciation system, the property is not qualified property for purposes of the additional first year depreciation deduction under § 168(k). See § 168(k)(2)(D).

(3) Failure to change to alternative depreciation system.

(a) Existing property. If an electing real property trade or business or an electing farming business does not depreciate any existing property that is described in section 4.02(1) of this revenue procedure, as applicable, under the alternative depreciation system for the election year and the subsequent taxable year then that trade or business has adopted an impermissible method of accounting for that item of MACRS property. As a result, a change from that impermissible method of accounting to the straight-line method, the applicable recovery period, and/or the applicable convention under the alternative depreciation system for the item of MACRS property is a change in method of accounting under § 446(e). See § 1.446-1(e)(2)(ii)(d)(2)(i). The taxpayer requests to make such a method change by filing Form 3115, Application for Change in Accounting Method, in accordance with the automatic change procedures or non-automatic change procedures, as applicable, in Rev. Proc. 2015-13, 2015-5 I.R.B. 419 (or any successor). If the taxpayer is eligible to make this method change under

the automatic change procedures, the method change is described in section 6.05 of Rev. Proc. 2018-31 (or any successor). The § 481(a) adjustment as of the first day of the year of change is calculated as though the change in use occurred for the item of MACRS property in the election year.

(b) Newly-acquired property. If an electing real property trade or business or an electing farming business does not determine its depreciation under the alternative depreciation system for any newly-acquired property that is described in section 4.02(1) of this revenue procedure, as applicable, for its placed-in-service year and the subsequent taxable year then that trade or business has adopted an impermissible method of accounting for that item of MACRS property. As a result, a change from that impermissible method of accounting to the straight-line method, the applicable recovery period, and/or the applicable convention under the alternative depreciation system for the item of MACRS property is a change in method of accounting under § 446(e). See § 1.446-1(e)(2)(ii)(d)(2)(i). The taxpayer requests to make such a method change by filing Form 3115 in accordance with the automatic change procedures or non-automatic change procedures, as applicable, in Rev. Proc. 2015-13 (or any successor). If the taxpayer is eligible to make this method change under the automatic change procedures, the method change is described in section 6.01 of Rev. Proc. 2018-31 (or any successor), provided none of the inapplicability provisions in section 6.01(1)(c) of Rev. Proc. 2018-31 (or any successor) apply. The § 481(a) adjustment as of the first day of the year of change is calculated as though the taxpayer determined depreciation under the alternative depreciation system for the item of MACRS property beginning for its placed-in-service year.

SECTION 5. MODIFICATION TO REV. PROC. 2018-31

Section 6.05 of Rev. Proc. 2018-31 provides the procedures for obtaining automatic consent to change the method of accounting for depreciation due to a change in the use of MACRS property. Section 6.05 of Rev. Proc. 2018-31 is modified as follows:

.01 Section 6.05(3), (4), and (5) are redesignated as section 6.05(4), (5), and (6), respectively; and

.02 New section 6.05(3) is added to read as follows:

(3) Section 481(a) adjustment. A taxpayer changing its method of accounting under this section 6.05 is required to calculate a § 481(a) adjustment as of the first day of the year of change as if the proposed method of accounting had always been used by the taxpayer beginning with the taxable year in which the change in the use of the MACRS property occurred by the taxpayer.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective December 21, 2018.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 87-57 and Rev. Proc. 2018-31 are modified.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Charles Magee of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Magee at (202) 317-7005 (not a toll-free call).