INTERNAL REVENUE
BULLETIN

IRS

Bulletin No. 2018–41
October 9, 2018

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

EMPLOYMENT TAX

Notice 2018–75, page 556.

The notice provides that section 132(g)(2)'s suspension of the exclusion from income provided by section 132(a)(6) does not apply to amounts received directly or indirectly by an individual in 2018 from an employer for expenses incurred in connection with a move occurring prior to January 1, 2018, that would have been deductible as moving expenses under section 217 of the Code if they had been paid directly by the individual prior to January 1, 2018, and that otherwise satisfy the requirements under section 132(g)(1).

Income Tax

REV. RUL. 2018–27, page 546.

Federal rates; adjusted federal rates; adjusted federal long-term rate, the long-term exempt rate, and the blended annual rate. For purposes of sections 382, 1274, 1288, 7872 and other sections of the Code, tables set forth the rates for October 2018.

REV. PROC. 2018–49, page 548.

Rev. Proc. 2018–49 modifies Rev. Proc. 2018–29, 2018–22 I.R.B. 634, and Rev. Proc. 2018–31, 2018–22 I.R.B. 637, to allow a taxpayer that early adopted a method of recognizing revenues described in the new financial accounting standards issued by the Financial Accounting Standards Board (FASB) and International Accounting Standards Board (IASB) (New Standards) to change its method of accounting for the recognition of income for federal income tax purposes to a method of recognizing revenues described in the New Standards under section 16.11 of Rev. Proc. 2018–31.

Notice 2018–71, page 548.

The notice provides guidance on the employer credit for paid family and medical leave under Code section 45S. The credit may be claimed by eligible employers and is equal to a percentage of wages paid to qualifying employees while they are on family and medical leave. The credit is effective only for wages paid in taxable years of the employer beginning after December 31, 2017, and before January 1, 2020. The notice provides guidance on issues arising under section 45S, including the requirements an employer must satisfy to be an eligible employer, the types of leave that are family and medical leave under section 45S, the minimum paid leave requirements, the calculation of the credit, and the impact of state-mandated leave on the availability of the credit.

REG–104397–18, page 558.

These proposed regulations provide guidance regarding the additional first year depreciation deduction under section 168(k) and reflect changes made by the Tax Cuts and Jobs Act.

REG–130244–17, page 591.

This document proposes removing final regulations setting forth minimum documentation requirements that ordinarily must be satisfied in order for certain related-party interests in a corporation to be treated as indebtedness for federal tax purposes (Documentation Regulations). This notice of proposed rulemaking also proposes conforming amendments to other final regulations to reflect the proposed removal of the Documentation Regulations.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 467, 468, 482, 483, 1288, 7520, 7872.)

Rev. Rul. 2018–27

This revenue ruling provides various prescribed rates for federal income tax purposes for October 2018 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2018–27 TABLE 1

Applicable Federal Rates (AFR) for October 2018

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
		Short-term		
AFR	2.55%	2.53%	2.52%	2.52%
110% AFR	2.80%	2.78%	2.77%	2.76%
120% AFR	3.06%	3.04%	3.03%	3.02%
130% AFR	3.32%	3.29%	3.28%	3.27%
		Mid-term		
AFR	2.83%	2.81%	2.80%	2.79%
110% AFR	3.11%	3.09%	3.08%	3.07%
120% AFR	3.40%	3.37%	3.36%	3.35%
130% AFR	3.68%	3.65%	3.63%	3.62%
150% AFR	4.26%	4.22%	4.20%	4.18%
175% AFR	4.98%	4.92%	4.89%	4.87%
		Long-term		
AFR	2.99%	2.97%	2.96%	2.95%
110% AFR	3.30%	3.27%	3.26%	3.25%
120% AFR	3.59%	3.56%	3.54%	3.53%
130% AFR	3.90%	3.86%	3.84%	3.83%

REV. RUL. 2018–27 TABLE 2

Adjusted AFR for October 2018

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	1.93%	1.92%	1.92%	1.91%
Mid-term adjusted AFR	2.14%	2.13%	2.12%	2.12%
Long-term adjusted AFR	2.27%	2.26%	2.25%	2.25%

REV. RUL. 2018–27 TABLE 3

Rates Under Section 382 for October 2018

Adjusted federal long-term rate for the current month	2.27%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months	2.29%

REV. RUL. 2018–27 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for October 2018

Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.67%
Appropriate percentage for the 30% present value low-income housing credit	3.29%

REV. RUL. 2018–27 TABLE 5

Rate Under Section 7520 for October 2018

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	3.4%

Section 42.—Low-Income Housing Credit

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2018. See Rev. Rul. 2018–27, page 546.

Section 280G.—Golden Parachute Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2018. See Rev. Rul. 2018–27, page 546.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of October 2018. See Rev. Rul. 2018–27, page 546.

Section 467.—Certain Payments for the Use of Property or Services

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2018. See Rev. Rul. 2018–27, page 546.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2018. See Rev. Rul. 2018–27, page 546.

Section 482.—Allocation of Income and Deductions Among Taxpayers

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2018. See Rev. Rul. 2018–27, page 546.

Section 483.—Interest on Certain Deferred Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2018. See Rev. Rul. 2018–27, page 546.

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2018. See Rev. Rul. 2018–27, page 546.

Section 7520.—Valuation Tables

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2018. See Rev. Rul. 2018–27, page 546.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2018. See Rev. Rul. 2018–27, page 546.

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.204: Changes in accounting periods and method of accounting.
(Also: Part I, Sections 446, 451; 1.451–1).

Rev. Proc. 2018–49

SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 2018–29, 2018–22 I.R.B. 634, and Rev. Proc. 2018–31, 2018–22 I.R.B. 637, to allow a taxpayer that early adopted (Early Adopter) a method of recognizing revenues described in the new financial accounting standards issued by the Financial Accounting Standards Board (FASB) and International Accounting Standards Board (IASB) (New Standards) to change its method of accounting for the recognition of income for federal income tax purposes to a method of recognizing revenues described in the New Standards under section 16.11 of Rev. Proc. 2018–31. Early adoption of the New Standards was allowed for reporting periods beginning after December 15, 2016.

SECTION 2. BACKGROUND

.01 On May 28, 2014, FASB and IASB jointly announced new financial accounting standards for revenue recognition, titled "Revenue from Contracts with Customers (Topic 606)". *See* FASB Update No. 2014–09 and IASB International Financial Reporting Standard (IFRS) 15.

.02 Publicly-traded entities, certain not-for-profit entities, and certain employee benefit plans are required to adopt the New Standards for annual reporting periods beginning after December 15, 2017. All other entities are required to adopt the New Standards for annual reporting periods beginning after December 15, 2018. However, early adoption was allowed for reporting periods beginning after December 15, 2016. *See* FASB Update No. 2015–14, "Revenue from Contracts with Customers (Topic 606), Deferral of the Effective Date."

.03 Rev. Proc. 2015–13, 2015–5 I.R.B. 419, as clarified and modified by Rev. Proc. 2015–33, 2015–24 I.R.B. 1067, and as modified by Rev. Proc. 2016–1, 2016–1 I.R.B. 1, and Rev. Proc. 2017–59, 2017–48 I.R.B. 543, provides the general procedures by which a taxpayer may obtain automatic consent of the Commissioner to a change in method of accounting described in the List of Automatic Changes. Rev. Proc. 2018–31 provides the List of Automatic Changes.

.04 Rev. Proc. 2018–29, as published in the Internal Revenue Bulletin on May 29, 2018, modified Rev. Proc. 2018–31 to provide the procedures for taxpayers that want to change their methods of accounting for the recognition of income for federal income tax purposes to a method of accounting that they use to recognize revenues under the New Standards. After Rev. Proc. 2018–29 was released, questions were received about whether Rev. Proc. 2018–29 applies to Early Adopters. This revenue procedure modifies the effective date in section 5.01 of Rev. Proc. 2018–29, and certain paragraphs of section 16.11 of Rev. Proc. 2018–31 to provide that this automatic method change applies to Early Adopters.

SECTION 3. MODIFICATIONS TO REV. PROC. 2018–29 AND REV. PROC. 2018–31

.01 *Modifications to Rev. Proc. 2018–29*. Section 5.01 of Rev. Proc. 2018–29 is modified to read as follows:

.01 *In general*. Except as otherwise provided under this section, this revenue procedure is effective on May 10, 2018, and applies to taxable years ending on or before May 10, 2021.

.02 *Modifications to Rev. Proc. 2018–31*. Rev. Proc. 2018–29 modified Rev. Proc. 2018–31 to add new section 16.11 to the List of Automatic Changes. This revenue procedure also modifies Rev. Proc. 2018–31 to be consistent with the modification made to Rev. Proc. 2018–29.

(1) Section 16.11(4) is modified to read as follows:

(4) *Time for making change*. The change under this section 16.11 may only be made for a taxable year ending on or before May 10, 2021.

(2) Section 16.11(6) is modified to read as follows:

(6) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015–13 does not apply to this change for a taxable year ending on or before May 10, 2021.

SECTION 4. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies Rev. Proc. 2018–29 and Rev. Proc. 2018–31.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective on May 10, 2018.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Justin R. Grill of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Grill at (202) 317-7003 (not a toll free number).

Employer Credit for Paid Family and Medical Leave

Notice 2018–71

PURPOSE

This notice provides guidance on the employer credit for paid family and medical leave under section 45S of the Internal Revenue Code (Code). This notice also announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to publish proposed regulations under section 45S.

BACKGROUND

Section 45S was added to the Code by "An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018" (the Act), Pub. L. 115–97, 131 Stat. 2504, enacted December 22, 2017. For purposes of section 38, regarding the general business credit, section 45S establishes a business credit for employers that provide paid family and medical leave (the credit). The credit is equal to a percentage of wages paid to qualifying employees while they are on family and medical leave. As explained below, the purposes for which an employee may take family and medical leave under section 45S are the same purposes for which an employee may take family and medical leave under title I of the Family and Medical Leave Act of 1993, as amended (FMLA), Pub. L. 103–3; 29 U.S.C. sec. 2601.

The questions and answers in this notice provide further details regarding the requirements of section 45S, but a brief summary follows. To be eligible to claim the credit, an employer must have a written policy that satisfies certain requirements. First, the policy must cover all qualifying employees; that is, all employees who have been employed for a year or more and were paid not more than a specified amount during the preceding year. In general, in determining whether an employee is a qualifying employee in 2018, the employee must not have had compensation from the employer of more than $72,000 in 2017. Second, the policy must provide at least two weeks of annual paid family and medical leave for each full-time qualifying employee and at least a proportionate amount of leave for each part-time qualifying employee. Third, the policy must provide for payment of at least 50 percent of the qualifying employee's wages while the employee is on leave. Fourth, if an employer employs qualifying employees who are not covered by title I of the FMLA, the employer's written policy must include language providing "non-interference" protections, as described in Section A of this notice. Thus, the written policy must incorporate the substantive rules that must be met in order for an employer to be eligible for the credit.

Any leave paid by a State or local government or required by State or local law is not taken into account for any purpose in determining the amount of paid family and medical leave provided by the employer. Thus, any such leave is not taken into account in determining the amount of paid family and medical leave provided by the employer, the rate of payment under the employer's written policy, or the determination of the credit.

For purposes of the credit, an employer is any person for whom an individual performs services as an employee under the usual common law rules applicable in determining the employer-employee relationship. Similarly, wages qualifying for the credit generally have the same meaning as wages subject to the Federal Unemployment Tax Act (FUTA) pursuant to section 3306(b), determined without regard to the $7,000 FUTA wage limitation.

GUIDANCE

This notice includes sections on the following topics:

A. Eligible Employer
B. Family and Medical Leave
C. Minimum Paid Leave Requirements
D. Calculating and Claiming the Credit
E. Effective Date

A. ELIGIBLE EMPLOYER

The credit is available only to eligible employers. Under section 45S(c)(1), an eligible employer is an employer that has a written policy in place that satisfies the requirements set forth in Q&A-2 below.

Question 1**:** Must an employer be subject to title I of the FMLA to be an eligible employer under section 45S?[1]

Answer 1**:** No. Any employer will be an eligible employer under section 45S if it has a written policy in place that provides paid family and medical leave, as described in Section B of this notice, satisfies the minimum paid leave requirements set forth in Section C of this notice, and, if applicable, includes the "non-interference" language described in Q&A-3.

Question 2**:** What must an eligible employer's written policy provide?

Answer 2**:** An eligible employer's written policy must provide paid family and medical leave, as described in Section B of this notice (Q&A-8 through Q&A-11) and must satisfy the minimum paid leave requirements set forth in Section C of this notice (Q&A-12 through Q&A-21). In summary, an eligible employer's written policy must provide all qualifying employees with at least two weeks of paid family and medical leave (prorated for part-time employees), at a rate of at least 50 percent of the employee's normal wages, as these terms are defined and described in more detail in Sections B and C of this notice. In addition, if the employer employs any qualifying employees, as defined in Q&A-12, who are not covered by title I of the FMLA, the employer's written policy must include "non-interference" language, as set forth in Q&A-3.

Question 3**:** If an employer employs any qualifying employees who are not covered by title I of the FMLA, do additional requirements apply in determining whether the employer is an eligible employer?[2]

Answer 3**:** Yes. If an employer employs at least one qualifying employee who is not covered by title I of the FMLA (including any employee who is not covered by title I of the FMLA because he or she works less than 1,250 hours per year), in accordance with section 45S(c)(2), the employer must include "non-interference" language in its written policy and comply with this language to be an eligible employer. This requirement applies to: (a) an employer subject to title I of the FMLA that has at least one qualifying employee who is not covered by title I of the FMLA, and (b) an employer not subject to title I of the FMLA (that, thus, has no employees covered by title I of the FMLA). The "non-interference" language must ensure that the employer will not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under the policy, and will not discharge, or in any other manner discriminate against, any individual for opposing any practice prohibited by the policy. The following "non-interference" language is an example of a written provision that would satisfy section 45S:

> *[Employer] will not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this policy. [Employer] will not discharge, or in any other manner discriminate against, any individual for opposing any practice prohibited by this policy.*

Question 4: Must an eligible employer's

[1]Section 101(4) of the FMLA defines "employer" as any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year, which includes (a) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and (b) any successor in interest of an employer; and includes any "public agency," as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)).

[2]An employer that employs any qualifying employees who are not covered by title I of the FMLA is an "added employer" under section 45S(c)(2)(B)(ii)).

written policy under section 45S be set forth in a single, separate document or meet other documentary requirements?

***Answer 4*:** An eligible employer's written policy under section 45S may be set forth in a single document or in multiple documents. For example, an employer may maintain different documents to cover different classifications of employees or different types of leave, and those documents collectively will constitute the employer's written policy under section 45S. An eligible employer's written policy under section 45S also may be included in the same document that governs the employer's other leave policies. However, if an employer's written policy provides paid leave for FMLA purposes and additional paid leave for other reasons (such as vacation or personal leave), only the leave specifically designated for FMLA purposes is considered to be family and medical leave under section 45S. *See* Q&A-9.

***Question 5*:** What is the general rule for determining when an employer's written policy must be in place?

Answer 5: Except as provided in the transition rule in Q&A-6 for the first taxable year of an employer beginning after December 31, 2017, the employer's written policy must be in place before the paid family and medical leave for which the employer claims the credit is taken. The written policy is considered to be in place on the later of the policy's adoption date or the policy's effective date.

Example. *Facts*: Employer adopts a written policy that satisfies all of the requirements of section 45S on June 15, 2019, with an effective date of July 1, 2019.

Conclusion: Assuming all other requirements for the credit are met, Employer may claim the credit with respect to family and medical leave paid in accordance with that policy to qualifying employees for leave taken on or after July 1, 2019.

***Question 6*:** For the first taxable year of an employer beginning after December 31, 2017, what is the transition rule for determining when the employer's written policy must be in place?

***Answer 6*:** For an employer's first taxable year beginning after December 31, 2017, a written leave policy or an amendment to a policy (whether it is a new policy for the taxable year or an existing policy) will be considered to be in place as of the effective date of the policy (or amendment), rather than a later adoption date, if (a) the policy (or amendment) is adopted on or before December 31, 2018, and (b) the employer brings its leave practices into compliance with the terms of the retroactive policy (or retroactive amendment) for the entire period covered by the policy (or amendment), including making any retroactive leave payments no later than the last day of the taxable year.

Example 1. *Facts*: Employer's taxable year is the calendar year. Employee takes two weeks of unpaid family and medical leave beginning January 15, 2018. Employer adopts a written policy that satisfies the requirements of section 45S on October 1, 2018, and chooses to make the policy effective retroactive to January 1, 2018. At the time the policy is adopted, Employer pays Employee (at a rate of payment provided by the policy) for the two weeks of unpaid leave taken in January 2018.

Conclusion: Assuming all other requirements for the credit are met, Employer may claim the credit with respect to the family and medical leave paid to Employee for the leave taken in January 2018.

Example 2. *Facts*: Employer's taxable year is the calendar year. Employer amends its FMLA policy in writing on April 15, 2018, effective for leave taken on or after April 15, 2018, to provide that four weeks of FMLA leave will be paid leave. Employer's FMLA policy does not provide for leave for qualifying employees who are not covered by title I of the FMLA or include "non-interference" language. Employee, who is a qualifying employee, but who is not covered by title I of the FMLA, takes three weeks of unpaid family and medical leave beginning June 18, 2018. On October 1, 2018, Employer amends its written policy to include "non-interference" language and to provide paid leave effective April 15, 2018, for qualifying employees who are not covered by title I of the FMLA. On October 15, 2018, Employer pays Employee for the three weeks of family and medical leave Employee took beginning June 18, 2018.

Conclusion: Assuming all other requirements for the credit are met, Employer may claim the credit with respect to the family and medical leave paid to Employee for the leave taken beginning in June 2018.

***Question 7*:** Is an eligible employer required to provide notice to employees that it has a written policy in place providing for paid family and medical leave under section 45S?

***Answer 7*:** No. Section 45S does not impose a notice requirement with respect to the written policy on employers. However, if an employer chooses to provide notice of the written policy to qualifying employees, the policy will not be considered to provide for paid leave to all qualifying employees as required under section 45S, unless the availability of paid leave is communicated to employees in a manner reasonably designed to reach each qualifying employee. This may include, for example, email communication, use of internal websites, employee handbooks, or posted displays in employee work areas.

B. FAMILY AND MEDICAL LEAVE

An eligible employer may claim the credit under section 45S only with respect to paid family and medical leave. Under section 45S(e)(1), family and medical leave means leave for any one or more of the purposes described under subparagraph (A), (B), (C), (D), or (E) of paragraph (1), or paragraph (3), of section 102(a) of the FMLA ("FMLA purposes"), whether the leave is provided under the FMLA or by a policy of the employer. Under section 45S(e)(2), if an employer provides paid leave as vacation leave, personal leave, or medical or sick leave (other than leave specifically for one or more of the FMLA purposes), that paid leave is not considered family and medical leave under section 45S.

***Question 8*:** What are the FMLA purposes for which paid family and medical leave under section 45S may be provided to a qualifying employee?

Answer 8: The FMLA purposes for which paid family and medical leave under section 45S may be provided are:

(a) The birth of a son or daughter of the employee and in order to care for the son or daughter.

(b) The placement of a son or daughter with the employee for adoption or foster care.

(c) Caring for the spouse, or a son, daughter, or parent, of the employee, if the spouse, son, daughter, or parent has a serious health condition.

(d) A serious health condition that makes the employee unable to perform the functions of the employee's position.

(e) Any qualifying exigency (as the Secretary of Labor shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is a member of the Armed Forces (including the National Guard and Reserves) who is on covered active duty (or has been notified of an impending call or order to covered active duty).

(f) Caring for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

The FMLA purposes are the purposes for which an employee may take leave under the FMLA. The terms used in this Q&A-8 have the same meaning as defined in section 825.102 of the FMLA regulations, 29 CFR § 825.102.

***Question 9*:** Under what circumstances is paid leave considered family and medical leave under section 45S?

***Answer 9*:** Other than the narrow exception described in Q&A-10, paid leave made available to an employee is considered family and medical leave under section 45S only if the leave is specifically designated for one or more FMLA purposes, may not be used for any other reason, and is not paid by a State or local government or required by State or local law. *See also* Q&A-21.

Example 1. *Facts*: Employer's written policy provides six weeks of annual paid leave for the birth of an employee's child, and to care for that child (an FMLA purpose). The leave may not be used for any other reason. No paid leave is provided by a State or local government or required by State or local law.

Conclusion: Employer's policy provides six weeks of family and medical leave under section 45S.

Example 2. *Facts*: Employer's written policy provides three weeks of annual paid leave that is specifically designated for any FMLA purpose and may not be used for any other reason. No paid leave is provided by a State or local government or required by State or local law.

Conclusion: Employer's policy provides three weeks of family and medical leave under section 45S.

Example 3. *Facts*: Employer's written policy provides three weeks of annual paid leave for any of the following reasons: FMLA purposes, minor illness, vacation, or specified personal reasons. No paid leave is provided by a State or local government or required by State or local law.

Conclusion: Employer's policy does not provide family and medical leave under section 45S because the leave is not specifically designated for one or more FMLA purposes and can be used for reasons other than FMLA purposes. This is true even if an employee uses the leave for an FMLA purpose.

***Question 10*:** What is the consequence under section 45S if an employer's written policy provides paid leave that otherwise would be specifically designated for an FMLA purpose (for example, to care for a spouse, child, or parent who has a serious medical condition), except for the fact that the leave is available to care for additional individuals not specified in the FMLA (for example, a grandchild, or grandparent who has a serious medical condition)?

***Answer 10*:** In this limited circumstance, the fact that the leave could also be used to care for additional individuals for whom care under the FMLA purpose is not required does not prevent the leave from being considered specifically designated for an FMLA purpose. However, the employer may not claim the credit for any leave taken to care for an individual other than a qualifying employee's spouse, parent, or child. *See also* Q&A-28.

Example. *Facts*: Employer's written policy provides four weeks of annual paid leave to care for family members with a serious health condition. The policy's definition of "family members" includes the individuals specified in the FMLA (spouse, children, and parents), and also includes grandparents, grandchildren, and domestic partners. Employee uses one week of annual paid leave to care for her grandmother, and at a later time, uses one week of annual paid leave to care for her son.

Conclusion: Employer's policy provides paid leave specifically designated for an FMLA purpose. Although the paid leave taken by Employee to care for her grandmother is not family and medical leave under section 45S, and Employer may not claim the credit for this leave, the paid leave taken by Employee to care for her son is family and medical leave under section 45S for which Employer may claim the credit, assuming all other requirements for the credit are met.

***Question 11*:** May paid leave provided pursuant to an employer's short-term disability program be characterized as family and medical leave under section 45S?

***Answer 11*:** Yes. Paid leave provided under an employer's short-term disability program, whether self-insured by an employer or provided through a short-term disability insurance policy, may be characterized as family and medical leave under section 45S if it otherwise meets the requirements to be family and medical leave under section 45S. *See* Q&A-9 and Q&A-15.

C. MINIMUM PAID LEAVE REQUIREMENTS

For an employer to be eligible to claim the credit, an employer's written policy must meet certain minimum requirements with respect to paid family and medical leave, as described in section 45S(c)(1) and (c)(2). These requirements are:

(1) the policy must provide at least two weeks of annual paid family and medical leave to all qualifying employees who are not part-time employees, and at least a proportionate amount of paid family and medical leave to qualifying employees who are part-time employees,

(2) the policy must require a rate of payment that is not less than 50 percent of the wages normally paid to the qualifying employee for services performed for the employer, and

(3) if the employer employs one or more qualifying employees who are not covered by title I of the FMLA, the employer's written policy also must include the "non-interference" language described in Q&A-3.

Under section 45S(c)(4), any leave that is paid by a State or local government or required by State or local law is not taken into account for any purpose in determining the amount of paid family and medical leave provided by the employer.

***Question 12*:** Who is a qualifying employee?

***Answer 12*:** A qualifying employee is an employee (as defined in section 3(e) of the Fair Labor Standards Act of 1938, as amended (FLSA)) who has been employed by the employer for one year or more, and whose compensation for the preceding year does not exceed an amount equal to 60 percent of the amount applicable for that year under section 414(q)(1)(B)(i).[3] For 2017, the applicable amount of compensation under section 414(q)(1)(B)(i) is $120,000.[4] Accordingly, to be a qualifying employee in 2018, an employee must have earned no more than $72,000 (60 percent of $120,000) in compensation in 2017 (or if applicable, in the employer's fiscal year beginning in 2017). Section 414(q)(4) provides that an employee's compensation is determined under section 415(c)(3).

***Question 13*:** How does an employer determine whether an employee has been employed for one year or more?

***Answer 13*:** Until further guidance is is-

[3]While the "preceding year" used for this purpose is generally the preceding calendar year, an employer whose fiscal year is not the calendar year may choose to use as the "preceding year" either (a) the employer's immediately preceding fiscal year, or (b) the calendar year ending in the employer's immediately preceding fiscal year.

[4]*See* Notice 2016-62, 2016-46 IRB 725. Each year, the IRS adjusts the applicable amount under section 414(q)(1)(B)(i) (and amounts under other Code sections) and publishes the adjusted amounts in a notice. The applicable amount under section 414(q)(1)(B)(i) for 2018 is $120,000. *See* Notice 2017-64, 2017-45 IRB 486.

sued, an employer may use any reasonable method to determine whether an employee has been employed for one year or more. Treating employees as employed for one year or more if they have been employed for 12 months, as set forth in section 825.110(b) of the FMLA regulations, 29 CFR § 825.110(b), is an example of a reasonable method. However, any requirement that an employee work 12 consecutive months to be a qualifying employee would not be viewed as a reasonable method for determining whether an employee has been employed for one year.

***Question 14*: Must an employee work a minimum number of hours per year to be a qualifying employee?**

***Answer 14*:** No. Section 45S does not require an employee to work a minimum number of hours per year to be a qualifying employee. Until further guidance is issued, any requirement that an employee work a minimum number of hours to be a qualifying employee would not be viewed as a reasonable method for determining whether an employee has been employed for one year. The rules under section 101(2)(A)(ii) of title I of the FMLA, which require an employee to work a minimum of 1,250 hours of service to be an eligible employee under the FMLA, do not apply to section 45S.

***Question 15*:** May the employer's written policy exclude any classification of employees from eligibility for paid family and medical leave?

***Answer 15*:** No. An employer's written policy must provide at least two weeks of annual paid family and medical leave to all qualifying employees who are not part-time employees, and at least a proportionate amount of annual paid family and medical leave to all qualifying employees who are part-time employees. The policy may not exclude any classification of employees (for example, collectively bargained employees) if they are qualifying employees.

Example 1. *Facts*: Employer has an insured short-term disability plan that provides disability benefits to any employee who becomes disabled after having completed six months of continuous service. Under the plan, a disability caused by, or resulting from, a pre-existing condition is not covered if the disability begins in the first 12 months after the effective date of coverage. For purposes of the plan, a pre-existing condition is one for which an employee consulted a physician, received medical treatment, or took prescribed drugs in the three months immediately prior to the effective date of coverage. The exclusion from coverage for pre-existing conditions applies to all employees of the employer during the applicable 12-month period.

Conclusion: Employees subject to the pre-existing condition exclusion are effectively not covered under the plan when they first become qualifying employees. In addition, in some cases, the requirement that an employee complete six months of continuous service might exclude some qualifying employees. Therefore, the plan will not in all cases cover all qualifying employees, and Employer may not claim the credit under section 45S for paid family and medical leave provided under the written policy with respect to any employees.

Example 2. *Facts*: Same facts as in *Example 1*, except that Employer adopts a written policy that provides for paid leave to any qualifying employee who is not covered under the short-term disability plan as a result of the six months of service requirement or the pre-existing condition exclusion. This leave is paid from Employer's general assets and the length of the paid leave is the same as the leave that would have been available under the short-term disability plan if neither the six months of service requirement nor the pre-existing condition exclusion applied to a qualifying employee.

Conclusion: Taking into account the leave available under Employer's insured short-term disability plan and Employer's supplemental self-insured paid leave arrangement as permitted under Q&A-4, Employer's written policy does not exclude any classification of qualifying employees and, assuming all other requirements for the credit are met, Employer may claim the credit under section 45S for paid family and medical leave provided under the written policy.

***Question 16*:** How many weeks of annual paid family and medical leave must an employer provide to qualifying employees to claim the credit under section 45S?

***Answer 16*:** An employer's written policy must provide qualifying employees who are not part-time employees with at least two weeks of annual paid family and medical leave and must provide at least a proportionate amount of annual paid family and medical leave to qualifying employees who are part-time employees. For part-time employees, the paid leave ratio must be at least equal to the ratio of the expected weekly hours worked by a qualifying employee who is a part-time employee to the expected weekly hours worked by an equivalent qualifying employee who is not a part-time employee, as described in section 45S(c)(1)(A)(ii). In determining the amount of paid family and medical leave provided by the employer for purposes of section 45S, any leave paid by a State or local government or required by State or local law is not taken into account.

Example. *Facts*: Employer's written policy provides four weeks of annual paid family and medical leave to any qualifying employee expected to work 40 hours per week, and two weeks of paid family and medical leave to any equivalent qualifying employee who is a part-time employee and is expected to work 20 hours per week. All of Employer's employees work either 20 or 40 hours per week.

Conclusion: Employer's policy meets the minimum paid leave requirements because each employee who is not a part-time employee may take at least the minimum two weeks of annual paid leave and each part-time employee may take at least a proportionate number of weeks of leave. Specifically, with respect to the proportionate amount, the ratio of expected weekly hours worked by a qualifying employee who is a part-time employee (20 hours) to the expected weekly hours worked by an equivalent qualifying employee who is not a part-time employee (40 hours) is 1:2, and the policy provides two weeks of paid leave to qualifying employees who are part-time employees and four weeks of paid leave to equivalent qualifying employees who are not part-time employees, satisfying the 1:2 ratio.

***Question 17*:** How does an employer determine who is a part-time employee?

***Answer 17*:** A part-time employee is an employee who is customarily employed for fewer than 30 hours per week.[5] Until further guidance is issued, an employer may use any reasonable method to determine how many hours an employee customarily works per week for the employer. Reasonable methods include the methods set forth in 29 CFR § 2530.200b–2 for calculating hours of service in connection with certain plans, such as qualified pension plans, subject to the Employee Retirement Income Security Act of 1974, as amended.

***Question 18*:** What rate of payment must an employer's written policy provide?

***Answer 18*:** The employer's written policy must provide that each qualifying employee who is on paid family and medical leave will be paid at least 50 percent of the wages normally paid to the employee for services performed for the employer. In determining the rate of payment under the policy, leave paid by a State or local gov-

[5]Section 45S(c)(1)(A)(i) uses the definition of part-time employee set forth in section 4980E(d)(4)(B), which states that a part-time time employee is any employee who is customarily employed for fewer than 30 hours per week.

ernment or required under State or local law is not taken into account. *See* Q&A-21.

***Question 19*: For this purpose, how does an employer determine the wages normally paid to an employee?**

***Answer 19*:** Wages normally paid to an employee means the wages normally paid to the employee for services performed for the employer. Overtime (other than regularly-scheduled overtime) and discretionary bonuses are excluded from wages normally paid. Until further guidance is issued, for employees who are paid (in whole or in part) on a basis other than a salaried or hourly rate, an employer must determine wages normally paid to the employee using the rules for determining regular rate of pay set forth in regulations issued under the FLSA. *See* 29 CFR § 778.109.

***Question 20*: Must the rate of payment or period of paid family and medical leave provided under an employer's written policy be uniform with respect to all qualifying employees and for all FMLA purposes?**

***Answer 20*:** No. Section 45S does not require an employer's rate of payment or period of paid family and medical leave to be uniform with respect to all qualifying employees and for all FMLA purposes. However, to the extent an employer's policy provides different rates of payment or periods of paid family and medical leave for different FMLA purposes, the minimum paid leave requirements must be satisfied with respect to each FMLA purpose for which the employer intends to claim the credit. Conversely, if an employer's policy provides a uniform rate of payment and period of paid family and medical leave for all qualifying employees and for all FMLA purposes (or a uniform rate of payment and period for several specified FMLA purposes), the policy as a whole must satisfy the minimum paid leave requirements, and it is not necessary for the minimum paid leave requirements to be satisfied separately with respect to each FMLA purpose.

Example 1. *Facts*: Employer's written policy provides each qualifying employee with six weeks of annual paid leave for the birth or adoption of the employee's child, or to care for that child (an FMLA purpose) at a rate of payment of 100 percent of wages normally paid to the employee for services performed for Employer. For all other FMLA purposes, the policy provides each qualifying employee with two weeks of annual paid leave at a rate of payment of 75 percent of wages normally paid to the employee.

Conclusion: Employer's written policy satisfies the minimum paid leave requirements.

Example 2. *Facts*: Employer's written policy provides each qualifying employee with two weeks of annual paid leave for the birth or adoption of the employee's child, or to care for that child (an FMLA purpose) at a rate of payment of 100 percent of wages normally paid to the employee, and also provides each qualifying employee who is not covered by a collective bargaining agreement with two weeks of annual paid leave for a serious health condition that makes the employee unable to perform the duties of his or her position (also an FMLA purpose) at a rate of payment of 100 percent of wages normally paid to the employee.

Conclusion: The portion of Employer's policy that provides paid leave to each qualifying employee for the birth or adoption of the employee's child, or to care for that child, satisfies the minimum paid leave requirements. However, the portion of the policy providing only certain qualifying employees (those who are not covered by a collective bargaining agreement) with paid leave for a serious health condition that makes the employee unable to perform the duties of his or her position does not satisfy the minimum paid leave requirements, and Employer may not claim the credit for any leave taken under that portion of the policy.

Example 3. *Facts*: Employer's written policy provides each qualifying employee with two weeks of annual paid leave for any FMLA purpose at a rate of payment of 100 percent of the wages normally paid to the employee, and each qualifying employee who has 10 years of service with an additional two weeks of annual paid leave for any FMLA purpose at a rate of payment of 100 percent of wages normally paid to the employee.

Conclusion: Employer's policy satisfies the minimum paid leave requirements.

***Question 21*: In determining the rate of payment under the employer's written policy, is leave paid by a State or local government or required by State or local law taken into account?**

***Answer 21*:** No. Leave paid by a State or local government or required by State or local law is not taken into account in determining whether an employer's written policy provides a rate of payment of at least 50 percent of the wages normally paid to an employee for services performed for the employer. To be eligible to claim the credit, an employer must independently satisfy the minimum paid leave requirements, including providing a rate of payment of at least 50 percent of wages normally paid to an employee. *See also* Q&A-9.

Example 1. *Facts*: Under State law, an employee on family and medical leave is eligible to receive six weeks of benefits paid by a State insurance fund at a rate of 50 percent of the employee's normal wages. Additionally, Employer's written policy concurrently provides each qualifying employee with six weeks of annual paid family and medical leave at a rate of payment of 30 percent of the wages normally paid to the employee for services performed for Employer. Consequently, in the aggregate, a qualifying employee can receive six weeks of annual paid family and medical leave at a rate of payment of 80 percent of the wages normally paid to the employee.

Conclusion: Employer's policy does not independently satisfy the requirement that the rate of payment be at least 50 percent of the wages normally paid to an employee.

Example 2. *Facts*: Same facts as *Example 1*, except that Employer's written policy provides each qualifying employee with six weeks of annual paid family and medical leave at a rate of payment of 50 percent of the wages normally paid to the employee that runs concurrently with the State leave. Consequently, in the aggregate, a qualifying employee can receive six weeks of annual paid family and medical leave at a rate of payment of 100 percent of the wages normally paid to the employee.

Conclusion: Employer's policy independently satisfies the requirement that the rate of payment be at least 50 percent of the wages normally paid to an employee. Only wages paid under Employer's written policy (50 percent of wages normally paid to the employee) may be used in calculating the credit. Wages paid pursuant to State law are not used in calculating the credit. *See* Q&A-26.

Example 3. *Facts*: Under State law, employers are required to provide employees six weeks of family and medical leave, and the State law permits this leave to be either paid or unpaid. Employer's written policy provides each qualifying employee with six weeks of annual paid family and medical leave at a rate of payment of 50 percent of the wages normally paid to the employee.

Conclusion: Employer's policy independently satisfies the requirement that the rate of payment be at least 50 percent of the wages normally paid to an employee.

D. CALCULATING AND CLAIMING THE CREDIT

Section 45S(a)(1) provides that, in the case of an eligible employer, the credit is an amount equal to the applicable percentage of the amount of wages paid to qualifying employees during any period in which the employees are on family and medical leave. Under section 45S(a)(2), the term "applicable percentage" means 12.5 percent increased (but not above 25 percent) by 0.25 percentage points for each percentage point by which the rate of payment exceeds 50 percent.

Under section 45S(b)(3), the amount of family and medical leave that may be taken into account with respect to any qualifying employee for any taxable year may not exceed 12 weeks. Section 45S(b)(1) provides that the credit with respect to any qualifying employee for any taxable year cannot exceed an amount equal to the product of the employee's normal hourly wage rate for each hour (or fraction thereof) of actual services performed for the employer and the number of hours (or fraction thereof) for which family and medical leave is taken.

***Question 22*:** How is the applicable percentage calculated?

***Answer 22*:** The applicable percentage is based on the rate of payment for the leave under the employer's policy. The base applicable percentage of 12.5 percent applies if the rate of payment is 50 percent. If the rate of payment under the policy is greater than 50 percent, the applicable percentage is increased by 0.25 percentage points for each percentage point by which the rate of payment exceeds 50 percent, up to a maximum applicable percentage of 25 percent.

Example 1. *Facts*: Employer's written policy provides each qualifying employee with four weeks of annual paid family and medical leave at a rate of payment of 75 percent of the wages normally paid to the employee.

Conclusion: Because the rate of payment under the policy exceeds 50 percent by 25 percentage points, the base applicable percentage of 12.5 percent is increased by 6.25 percent (.25 percent multiplied by 25), for an applicable percentage of 18.75 percent.

Applicable Percentage = 12.5 percent + (0.25 percent x 25)
= 12.5 percent + 6.25 percent
= 18.75 percent

Example 2. *Facts*: Same facts as *Example 1*, except that Employer's written policy provides each qualifying employee who has at least 10 years of service a rate of payment of 100 percent of the wages normally paid to the employee for services performed by the employer, rather than 75 percent.

Conclusion: Because the rate of payment for a qualifying employee who has at least 10 years of service is 100 percent (which is 50 percentage points greater than 50) the base applicable percentage for these employees is increased by 12.5 percent (0.25 percent multiplied by the 50). The applicable percentage with respect to such an employee is therefore 25 percent (the base percentage of 12.5 percent, plus 12.5 percent). For a qualifying employee who has less than 10 years of service, the applicable percentage is the same as determined in *Example 1*.

Calculation for employee who has at least 10 years of service:

Applicable Percentage = 12.5 percent + (0.25 percent x 50)
= 12.5 percent + 12.5 percent
= 25 percent

***Question 23*:** How is the credit calculated?

***Answer 23*:** The credit is equal to the applicable percentage of the amount of wages normally paid to a qualifying employee during any period (up to 12 weeks) that the employee is on family and medical leave.

Example 1. *Facts*: Employer's written policy provides each qualifying employee with four weeks of annual paid family and medical leave at a rate of payment of 75 percent of wages normally paid to the employee. During 2018, Employee takes four weeks of leave under the policy. Employee is normally paid $1,000 per week. Employer pays Employee a total of $3,000 ($750 per week for four weeks) for family and medical leave under section 45S.

Conclusion: Assuming all the requirements for the credit are met, Employer may claim a credit of $562.50 with respect to Employee (18.75 percent of $3,000).

Example 2. *Facts*: Same facts as *Example 1*, except that Employer's written policy provides each qualifying employee who has at least 10 years of service with a rate of payment of 100 percent of the wages normally paid to the employee. During 2018, Employee A, who has been employed for 12 years, takes leave under the policy for four weeks, and Employee B, who has been employed for five years, takes leave under the policy for two weeks. Both Employee A and Employee B are normally paid $1,000 per week. Employer pays Employee A a total of $4,000, and Employee B a total of $1,500, for family and medical leave under section 45S.

Conclusion: Assuming all the requirements for the credit are met, Employer may claim a total credit of $1,281.25 with respect to Employee A and Employee B. The credit for Employee A is $1,000 (25 percent of $4,000), and the credit for Employee B is $281.25 (18.75 percent of $1,500).

***Question 24*:** What are wages for purposes of section 45S?

***Answer 24*:** For purposes of section 45S, pursuant to section 45S(g), the term "wages" has the same meaning given to that term by section 3306(b) (regarding FUTA wages), determined without regard to the $7,000 FUTA wage limitation. Section 3306(b) generally defines wages as all remuneration for employment, as defined by section 3306(c), subject to certain limitations. However, for purposes of section 45S, the term "wages" does not include any amount taken into account for purposes of determining any other credit allowed under section 38, which provides for several separate business-related credits.

Example 1. *Facts*: Employer pays wages to Employee that qualify as a research expense for purposes of determining the amount of Employer's research credit under section 41(a). The research credit under section 41(a) is a general business credit allowed under section 38. Some of the wages paid to Employee for the performance of qualified services under section 41(b) were paid while Employee was on family and medical leave.

Conclusion: For purposes of determining the amount of Employer's credit under section 45S, Employer must exclude from the wages paid while Employee was on family and medical leave any wages treated as a qualified research expense for purposes of determining the amount of Employer's research credit under section 41(a).

Example 2. *Facts*: Employer is tax-exempt under section 501(a) as an educational organization described in section 501(c)(3). Employment with Employer is not employment for purposes of FUTA tax pursuant to section 3306(c)(8); thus, compensation paid by Employer is not FUTA wages within the meaning of section 3306(b). Although Employer is exempt from federal income tax under section 501(a), it earns unrelated business taxable income from a trade or business that is not substantially related to the performance of Employer's exempt purpose. Employer maintains a written paid leave policy that provides at least two weeks of paid family and medical leave to all qualifying employees, including those performing services for the unrelated trade or business. Employer would like to claim the credit against its unrelated business income tax liability.

Conclusion: Because Employer does not pay FUTA wages within the meaning of section 3306(b), compensation paid by Employer does not constitute wages for purposes of section 45S(g). Consequently, amounts paid by Employer to its employees while on paid family and medical leave are not eligible for the credit.

***Question 25*:** Are wages paid by a third-party payer (including an insurance company, a professional employer organization, or a Certified Professional Employer Organization) to qualifying employees for services performed for an eligible employer considered wages for purposes of section 45S?

***Answer 25*:** Yes. However, only the eligible employer, and not the third-party payer, may take into account wages paid to qualifying employees for services performed for the eligible employer in determining the credit under section 45S.

***Question 26*:** Is leave paid by a State or local government or required by a State or local law taken into account in determining the credit?

***Answer 26*:** No. Leave paid by a State or local government or required by a State or local law is not taken into account in determining the credit.

***Question 27*:** Are wages paid through an employer's short-term disability program for family and medical leave taken into account in determining the credit?

***Answer 27*:** Yes. Wages paid through an employer's short-term disability program for family and medical leave are taken into account in determining the credit provided that the program (in combination with any other employer-paid leave arrangement) meets the minimum paid leave requirements. *See* Q&A-11.

Question 28: May an employer claim the credit with respect to an employee who is not a qualifying employee when the paid family and medical leave is taken, but who becomes a qualifying employee at a later time during the taxable year?

Answer 28: No. An eligible employer may claim the credit only with respect to wages paid to an employee who is a qualifying employee at the time family and medical leave is taken. Wages paid to an employee for family and medical leave taken before an employee becomes a qualifying employee are excluded in determining the employer's credit. However, if an employer's written policy provides that employees may take paid family and medical leave before they become qualifying employees and does not provide a dedicated amount of leave meeting the minimum paid leave requirements that may only be taken after an employee becomes a qualifying employee, the leave will not fail to (a) be specifically designated for an FMLA purpose, or (b) meet the minimum paid leave requirements, solely because an employee may take paid leave before becoming a qualifying employee.

Example. *Facts*: Employer's written policy provides all employees who have completed at least six months of employment with four weeks of annual paid family and medical leave at a rate of payment of 100 percent of wages normally paid to the employee for services performed by the employer. Employee completes six months of employment with employer as of January 1, 2019, and one year of employment (becoming a qualifying employee) as of July 1, 2019. On June 15, 2019, Employee begins a four week period of paid family and medical leave under the policy.

Conclusion: Assuming all the requirements to claim the credit are met, Employer may use wages paid to Employee for family and medical leave on or after July 1, 2019, the date that Employee becomes a qualifying employee, in the calculation of the credit. Wages paid for family and medical leave taken before Employee becomes a qualifying employee are not eligible for the credit.

Question 29: Who may claim the credit?

Answer 29: Only an eligible employer for whom qualifying employees perform services may claim the credit with respect to wages paid. *See also* Q&A-25.

Question 30: Does claiming the credit affect an employer's deduction for wages or salaries paid for the taxable year?

Answer 30: Yes. Section 280C denies a deduction for wages or salaries paid for the taxable year equal to the amount of the credit. Under section 280C(a), an employer's deduction for wages paid is reduced by an amount equal to the amount of the credit.

Question 31: How does an eligible employer claim the credit?

Answer 31: An eligible employer must file IRS Form 8994, Employer Credit for Paid Family and Medical Leave, and IRS Form 3800, General Business Credit, with its tax return to claim the credit.

Question 32: For purposes of the limitation described in section 45S(b)(1), how does an employer determine the normal hourly wage rate of an employee who is not paid an hourly wage rate?

Answer 32: Until further guidance is issued, an employer may use any reasonable method to convert the normal wages paid to an employee who is not paid an hourly wage rate to an hourly rate.

Question 33: Are employers aggregated under section 45S for purposes of calculating the credit?

Answer 33: No. Section 45S(c)(3) provides that all persons who are treated as a single employer under section 52(a) and (b) are treated as a single taxpayer. In accordance with this aggregation rule, employers are aggregated for purposes of section 45S(h)(1), which provides that a taxpayer may elect to have section 45S not apply for any taxable year. This is the only purpose for which employers are aggregated under section 45S. Consequently, employers are not aggregated for any other purpose under section 45S, including calculating the credit as set forth in this Section D.

Question 34: Does each member of a controlled group of corporations (as defined in section 52(a)) and each member of a group of businesses under common control (as defined in section 52(b)) generally make a separate election to claim or not to claim the credit under section 45S(h)?

Answer 34: Yes. Each member of a controlled group of corporations and each member of a group of businesses under common control generally makes a separate election to claim or not to claim the credit in accordance with rules set forth under section 51(j)(2) and (3). However, in the case of a consolidated group (as defined in § 1.1502–1(h)), the election is made by the agent (as defined in § 1.1502–77) of the group. An election to claim or not to claim the credit is made for the taxable year in which the credit is available by claiming or not claiming the credit on either an original return or an amended return filed for that taxable year. *See* Q&A 31.

E. EFFECTIVE DATE

This notice is effective as of September 24, 2018, and applies to wages paid in taxable years beginning after December 31, 2017, and before January 1, 2020.

PUBLIC COMMENTS

This notice generally provides guidance that the Treasury Department and the IRS intend to incorporate into proposed regulations. The proposed regulations will provide interested parties an opportunity to comment on the issues addressed in the proposed regulations. However, to assist in development of the proposed regulations, the Treasury Department and the IRS request comments on the guidance provided in this notice. Public comments should be submitted no later than November 23, 2018. Comments should include a reference to Notice 2018–71. Send submissions to CC:PA:LPD:PR (Notice 2018–71), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2018–71), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044, or sent electronically, via the following e-mail address: *Notice.comments@irscounsel.treas.gov*. Please include "Notice 2018–71" in the subject line of any electronic communication. All material submitted will be available for public inspection and copying.

PAPERWORK REDUCTION ACT

The collection of information contained in this notice will be submitted through IRS Form 8944 to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. The collection of information is required to obtain a general business credit for employers that provide paid family and medical leave. The likely respondents are individuals, households, businesses, and other for-profit or not-for-profit institutions. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

DRAFTING INFORMATION

The principal author of this notice is Dara Alderman of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice contact Dara Alderman at (202) 317-5500 (not a toll-free number).

Guidance under Section 132(g) for the Exclusion from Income of Qualified Moving Expense Reimbursements

Notice 2018–75

PURPOSE

This notice provides guidance on the application of section 132(g)(2) of the Internal Revenue Code (Code) to employer reimbursements in a taxable year beginning after December 31, 2017, for qualified moving expenses incurred in connection with a move that occurred prior to January 1, 2018. Specifically, this notice provides that the suspension of the exclusion from income provided by section 132(a)(6) under section 132(g)(2) does not apply to amounts received directly or indirectly by an individual in 2018 from an employer for expenses incurred in connection with a move occurring prior to January 1, 2018, that would have been deductible as moving expenses under section 217 of the Code if they had been paid directly by the individual prior to January 1, 2018, and that otherwise satisfy the requirements under section 132(g)(1). Such amounts will be qualified moving expense reimbursements under section 132(g)(1) that are excludable under section 132(a)(6).

BACKGROUND

Section 132(a)(6) provides that gross income does not include qualified moving expense reimbursements. Section 132(g)(1) defines a "qualified moving expense reimbursement" as any amount directly or indirectly received by an individual from an employer as payment for (or a reimbursement of) expenses which would be deductible as moving expenses under section 217 if such expenses were directly paid or incurred by the individual. The term qualified moving expense reimbursement does not include any payment for (or reimbursement of) an expense that was actually deducted by the individual in a prior taxable year. Qualified moving expense reimbursements are also excludable from wages and compensation for employment tax purposes. *See* sections 3121(a)(20), 3231(e)(5), 3306(b)(16), and 3401(a)(19).

Section 11048(a) of the Tax Cuts and Jobs Act, Pub. L. No. 115–97, 131 Stat. 2054, 2088 (2017) (the "Act"), amended section 132(g) by adding paragraph 132(g)(2). Section 132(g)(2) provides that section 132(a)(6) does not apply to taxable years beginning after December 31, 2017, and before January 1, 2026, except in the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order and incident to a permanent change of station. Section 11048(b) of the Act provides that this amendment applies to taxable years beginning after December 31, 2017.[6]

The Internal Revenue Service (IRS) and the Department of the Treasury (Treasury Department) have received questions concerning the applicability of section 132(a)(6) to payments or reimbursements received after December 31, 2017, for expenses resulting from moves that occurred prior to January 1, 2018.[7] Specifically, the questions concern the following two situations:

(1) An employer pays a third party moving service provider after December 31, 2017, for moving services provided to an individual prior to January 1, 2018; or

(2) An employer reimburses an individual after December 31, 2017, for expenses incurred in connection with a move by the individual prior to January 1, 2018.

In inquiring whether, with respect to employment-related moves occurring in 2017, the change made by section 132(g)(2) prohibits an exclusion from income for payments for moving services made to third parties or reimbursements for moving services made to individuals on or after January 1, 2018, stakeholders noted that given the time of the year when the TCJA was passed, individuals who relocated in 2017 but who did not receive payment or reimbursement until 2018 would not have anticipated that the expected payment or reimbursement could become taxable if received in 2018 rather than 2017.

DISCUSSION

The exclusion from income provided in section 132(g)(1) applies if, among other things, the expenses being paid or reimbursed (1) would be deductible under section 217 if directly paid or incurred by the individual, and (2) the expenses were not deducted by the individual. Section 11048(b) of the Act, providing the effective date for the suspension of the exclusion from income for qualified moving expense reimbursements, does not specify whether the suspension applies to all payments or reimbursements received after December 31, 2017, irrespective of when the move occurred, or, alternatively, only to payments or reimbursements for ex-

[6]Similarly, section 11049(a) of the Act enacted section 217(k), which suspended the deduction for certain moving expenses provided by section 217 of the Code for any taxable year beginning after December 31, 2017, and before January 1, 2026, except for individuals who are members of the Armed Forces of the United States on active duty and meet the requirements of section 217(g).

[7]Since individual taxpayers generally have the calendar year as their taxable year and employers report income and wages to employees on a calendar year basis, as a practical matter, section 132(g)(2) is generally effective on January 1, 2018. Accordingly, this notice generally refers to moving expenses paid or incurred in 2017 and payments or reimbursements received in 2018.

penses incurred for moves that occurred after December 31, 2017.

This notice provides that the suspension of the exclusion in section 132(a)(6) applies only to payments or reimbursements for expenses incurred in connection with moves that occurred after December 31, 2017. Thus, if an individual moved in 2017 and the expenses for the move would have been deductible by the individual under section 217 as in effect prior to the amendments made by the Act if they had been paid directly by the individual in 2017, and the individual did not deduct the moving expenses, then the amount received (directly or indirectly) in 2018 by the individual from an employer as payment for or reimbursement of the expenses will be a qualified moving expense reimbursement under section 132(g)(1). As such, the payment or reimbursement of the expenses is excludable from income as a qualified moving expense reimbursement under section 132(a)(6), and the amount is both excludable from wages under sections 3121(a)(20), 3306(b)(16), and 3401(a)(19) and excludable from compensation under section 3231(e)(5).[8]

Employers that have included such amounts in individuals' wages or compensation for purposes of federal employment taxes and have withheld and paid federal employment taxes on these amounts may use the adjustment process under section 6413 or the refund claim process under section 6402 to correct the overpayment of federal employment taxes on these amounts (for information on these adjustment and refund claim processes see the regulations under these sections, Rev. Rul. 2009–39, 2009–52 I.R.B. 951 (2009), Publication 15 (Circular E), Employer's Tax Guide, and the Instructions for Form 941–X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund).

DRAFTING INFORMATION

The principal author of this notice is Andrew K. Holubeck, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, contact Mr. Holubeck at (202) 317-4774 (not a toll-free number).

[8]Some of the employer payments covered by this Notice may also be excludable from the general definition of "compensation" under section 3231(e).

Part IV. Items of General Interest

Notice of Proposed Rulemaking Additional First Year Depreciation Deduction

REG–104397–18

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance regarding the additional first year depreciation deduction under section 168(k) of the Internal Revenue Code (Code). These proposed regulations reflect changes made by the Tax Cuts and Jobs Act. These proposed regulations affect taxpayers who deduct depreciation for qualified property acquired and placed in service after September 27, 2017.

DATES: Written or electronic comments and requests for a public hearing must be received by October 9, 2018.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–104397–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–104397–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–104397–18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Elizabeth R. Binder, (202) 317-7005; concerning submissions of comments or requests for a public hearing, Regina L. Johnson, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under section 168(k). Section 168(k) was added to the Code by section 101 of the Job Creation and Worker Assistance Act of 2002, Public Law 107–147 (116 Stat. 21). Section 168(k) allows an additional first year depreciation deduction in the placed-in-service year of qualified property. Subsequent amendments to section 168(k) increased the percentage of the additional first year depreciation deduction from 30 percent to 50 percent (to 100 percent for property acquired and placed in service after September 8, 2010, and generally before January 1, 2012), extended the placed-in-service date generally through December 31, 2019, and made other changes. See section 201 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Public Law 108–27 (117 Stat. 752), sections 403 and 408 of the Working Families Tax Relief Act of 2004, Public Law 108–311 (118 Stat. 1166), sections 336 and 337 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418), sections 403 and 405 of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 2577), section 103 of the Economic Stimulus Act of 2008, Public Law 110–185 (122 Stat. 613), section 3081 of the Housing Assistance Tax Act of 2008, Public Law 110–289 (122 Stat. 2654), section 1201 of the American Recovery and Reinvestment Tax Act of 2009, Public Law 111–5 (123 Stat. 115), section 2022 of the Small Business Jobs Act of 2010, Public Law 111–240 (124 Stat. 2504), section 401 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312 (124 Stat. 3296), section 331 of the American Taxpayer Relief Act of 2012, Public Law 112–240 (126 Stat. 2313), sections 125, 202, 210, 212, and 214 of the Tax Increase Prevention Act of 2014, Public Law 113–295 (128 Stat. 4010), and section 143 of the Protecting Americans from Tax Hikes Act of 2015, enacted as Division Q of the Consolidated Appropriations Act, 2016, Public Law 114–113 (129 Stat. 2242).

On December 22, 2017, section 168(k) and related provisions were amended by sections 12001(b)(13), 13201, and 13204 of the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054) (the "Act") to provide further changes to the additional first year depreciation deduction. Unless otherwise indicated, all references to section 168(k) hereinafter are references to section 168(k) as amended.

Section 167(a) allows as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear, and obsolescence of property used in a trade or business or of property held for the production of income. The depreciation deduction allowable for tangible depreciable property placed in service after 1986 generally is determined under the Modified Accelerated Cost Recovery System provided by section 168 (MACRS property). The depreciation deduction allowable for computer software that is placed in service after August 10, 1993, and is not an amortizable section 197 intangible, is determined under section 167(f)(1).

Section 168(k), prior to amendment by the Act, allowed an additional first year depreciation deduction for the placed-in-service year equal to 50 percent of the adjusted basis of qualified property. Qualified property was defined in part as property the original use of which begins with the taxpayer.

Section 13201 of the Act made several amendments to the allowance for additional first year depreciation deduction in section 168(k). For example, the additional first year depreciation deduction percentage is increased from 50 to 100 percent; the property eligible for the additional first year depreciation deduction is expanded to include certain used depreciable property and certain film, television, or live theatrical productions; the placed-in-service date is extended from before January 1, 2020, to before January 1, 2027 (from before January 1, 2021, to before January 1, 2028, for longer production period property or certain aircraft property described in section 168(k)(2)(B) or (C)); and the date on which a specified plant is planted or grafted by the taxpayer is extended from before January 1, 2020, to before January 1, 2027.

Section 168(k) allows a 100-percent additional first year depreciation deduction for qualified property acquired and placed in service after September 27, 2017, and placed in service before January 1, 2023 (before January 1, 2024, for longer production period property or certain aircraft property described in section 168(k)(2)(B) or (C)). If a taxpayer elects to apply section 168(k)(5), the 100-percent additional first year depreciation deduction also is allowed for a specified plant planted or grafted after September 27, 2017, and before January 1, 2023. The 100-percent additional first year depreciation deduction is decreased by 20 percent annually for qualified property placed in service, or a specified plant planted or grafted, after December 31, 2022 (after December 31, 2023, for longer production period property or certain aircraft property described in section 168(k)(2)(B) or (C)).

Section 168(k)(2)(A), as amended by the Act, defines "qualified property" as meaning, in general, property (1) to which section 168 applies that has a recovery period of 20 years or less, which is computer software as defined in section 167(f)(1)(B) for which a deduction is allowable under section 167(a) without regard to section 168(k), which is water utility property, which is a qualified film or television production as defined in section 181(d) for which a deduction would have been allowable without regard to section 181(a)(2) or (g) or section 168(k), or which is a qualified live theatrical production as defined in section 181(e) for which a deduction would have been allowable without regard to section 181(a)(2) or (g) or section 168(k); (2) the original use of which begins with the taxpayer or the acquisition of which by the taxpayer meets the requirements of section 168(k)(2)(E)(ii); and (3) which is placed in service by the taxpayer before January 1, 2027. Section 168(k)(2)(E)(ii) requires that the acquired property was not used by the taxpayer at any time prior to such acquisition and the acquisition of such property meets the requirements of section 179(d)(2)(A), (B), and (C) and section 179(d)(3).

However, section 168(k)(2)(D) provides that qualified property does not include any property to which the alternative depreciation system under section 168(g) applies, determined without regard to section 168(g)(7) (relating to election to have the alternative depreciation system apply), and after application of section 280F(b) (relating to listed property with limited business use).

Section 13201(h) of the Act provides the effective dates of the amendments to section 168(k) made by section 13201 of the Act. Except as provided in section 13201(h)(2) of the Act, section 13201(h)(1) of the Act provides that these amendments apply to property acquired and placed in service after September 27, 2017. However, property is not treated as acquired after the date on which a written binding contract is entered into for such acquisition. Section 13201(h)(2) provides that the amendments apply to specified plants planted or grafted after September 27, 2017.

Additionally, section 12001(b)(13) of the Act repealed section 168(k)(4) (relating to the election to accelerate alternative minimum tax credits in lieu of the additional first year depreciation deduction) for taxable years beginning after December 31, 2017. Further, section 13204(a)(4)(B)(ii) repealed section 168(k)(3) (relating to qualified improvement property) for property placed in service after December 31, 2017.

Explanation of Provisions

The proposed regulations describe and clarify the statutory requirements that must be met for depreciable property to qualify for the additional first year depreciation deduction provided by section 168(k). Further, the proposed regulations instruct taxpayers how to determine the additional first year depreciation deduction and the amount of depreciation otherwise allowable for this property. Because the Act made substantial amendments to section 168(k), the proposed regulations update existing regulations in § 1.168(k)–1 by providing a new section at § 1.168(k)–2 for property acquired and placed in service after September 27, 2017, and make conforming amendments to the existing regulations.

1. *Eligibility Requirements for Additional First Year Depreciation Deduction*

The proposed regulations follow section 168(k)(2), as amended by the Act, and section 13201(h) of the Act to provide that depreciable property must meet four requirements to be qualified property. These requirements are (1) the depreciable property must be of a specified type; (2) the original use of the depreciable property must commence with the taxpayer or used depreciable property must meet the acquisition requirements of section 168(k)(2)(E)(ii); (3) the depreciable property must be placed in service by the taxpayer within a specified time period or must be planted or grafted by the taxpayer before a specified date; and (4) the depreciable property must be acquired by the taxpayer after September 27, 2017.

2. *Property of a Specified Type*

A. Property Eligible for the Additional First Year Depreciation Deduction

The proposed regulations follow the definition of qualified property in section 168(k)(2)(A)(i) and (k)(5) and provide that qualified property must be one of the following: (1) MACRS property that has a recovery period of 20 years or less; (2) computer software as defined in, and depreciated under, section 167(f)(1); (3) water utility property as defined in section 168(e)(5) and depreciated under section 168; (4) a qualified film or television production as defined in section 181(d) and for which a deduction would have been allowable under section 181 without regard to section 181(a)(2) and (g) or section 168(k); (5) a qualified live theatrical production as defined in section 181(e) and for which a deduction would have been allowable under section 181 without regard to section 181(a)(2) and (g) or section 168(k); or (6) a specified plant as defined in section 168(k)(5)(B) and for which the taxpayer has made an election to apply section 168(k)(5). Qualified improvement property acquired after September 27, 2017, and placed in service after September 27, 2017, and before January 1, 2018, also is qualified property.

For property placed in service after December 31, 2017, section 13204 of the Act amended section 168(e) to eliminate the 15-year MACRS property classification for qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property, and amended section 168(k) to eliminate qualified improvement property as a specific category of qualified property. Because of the effective date of section 13204 of the Act (property placed in service after December 31, 2017), the proposed regulations provide that MACRS property with a recovery period of 20 years or less includes the following MACRS property that is acquired by the taxpayer after September 27, 2017, and placed in service by the taxpayer after September 27, 2017, and before January 1, 2018: (1) Qualified leasehold improvement property; (2) qualified restaurant property that is qualified improvement property; and (3) qualified retail improvement property. For the same reason, the proposed regulations provide that qualified property includes qualified improvement property that is acquired by the taxpayer after September 27, 2017, and placed in service by the taxpayer after September 27, 2017, and before January 1, 2018. Further, to account for the statutory amendments to the definition of qualified improvement property made by the Act, the proposed regulations define qualified improvement property for purposes of section 168(k)(3) (before amendment by section 13204 of the Act) and section 168(e)(6) (as amended by section 13204 of the Act).

For purposes of determining the eligibility of MACRS property as qualified property, the proposed regulations retain the rule in § 1.168(k)–1(b)(2)(i)(A) that the recovery period applicable for the MACRS property under section 168(c) of the general depreciation system (GDS) is used, regardless of any election made by the taxpayer to depreciate the class of property under the alternative depreciation system of section 168(g) (ADS).

B. Property Not Eligible for the Additional First Year Depreciation Deduction

The proposed regulations provide that qualified property does not include (1) property excluded from the application of section 168 as a result of section 168(f); (2) property that is required to be depreciated under the ADS (as described below); (3) any class of property for which the taxpayer elects not to deduct the additional first year depreciation under section 168(k)(7); (4) a specified plant placed in service by the taxpayer in the taxable year and for which the taxpayer made an election to apply section 168(k)(5) for a prior year under section 168(k)(5)(D); (5) any class of property for which the taxpayer elects to apply section 168(k)(4) (this exclusion applies to property placed in service in any taxable year beginning before January 1, 2018, because section 12001(b)(13) of the Act repealed section 168(k)(4) for taxable years beginning after December 31, 2017); or (6) property described in section 168(k)(9)(A) or (B). Section 168(k)(9) provides that qualified property does not include (A) any property that is primarily used in a trade or business described in section 163(j)(7)(A)(iv), or (B) any property used in a trade or business that has had floor plan financing indebtedness (as defined in section 163(j)(9)) if the floor plan financing interest related to such indebtedness was taken into account under section 163(j)(1)(C). Section 163(j) applies to taxable years beginning after December 31, 2017. Accordingly, the exclusion of property described in section 168(k)(9) from the additional first year depreciation deduction applies to property placed in service in any taxable year beginning after December 31, 2017.

Property is required to be depreciated under the ADS if the property is described under section 168(g)(1)(A), (B), (C), (D), (F), or (G) or if other provisions of the Code require depreciation for the property to be determined under the ADS. Accordingly, MACRS property that is nonresidential real property, residential rental property, and qualified improvement property held by an electing real property trade or business (as defined in section 163(j)(7)(B)), and property with a recovery period of 10 years or more that is held by an electing farming business (as defined in section 163(j)(7)(C)), are not eligible for the additional first year depreciation deduction for taxable years beginning after December 31, 2017. Pursuant to section 168(k)(2)(D), MACRS property for which the taxpayer makes an election under section 168(g)(7) to depreciate the property under the ADS is eligible for the additional first year depreciation deduction (assuming all other requirements are met).

C. Elections

The proposed regulations provide rules for making the election out of the additional first year depreciation deduction pursuant to section 168(k)(7) and for making the election to apply section 168(k)(5) to a specified plant. Additionally, the proposed regulations provide rules for making the election under section 168(k)(10) to deduct 50 percent, instead of 100 percent, additional first year depreciation for qualified property acquired after September 27, 2017, by the taxpayer and placed in service or planted or grafted, as applicable, by the taxpayer during its taxable year that includes September 28, 2017. Because section 168(k)(10) does not state that the election may be made "with respect to any class of property" as stated in section 168(k)(7) for making the election out of the additional first year depreciation deduction, the proposed regulations provide that the election under section 168(k)(10) applies to all qualified property.

3. *New and Used Property*

A. New Property

The proposed regulations generally retain the original use rules in § 1.168(k)–1(b)(3). Pursuant to section 168(k)(2)(A)(ii), the proposed regulations do not provide any date by which the original use of the property must commence with the taxpayer. Because section 13201 of the Act removed the rules regarding sale–leaseback transactions, the proposed regulations also do not retain the original use rules in § 1.168(k)–1(b)(3)(iii)(A) and (C) regarding such transactions, including a sale-leaseback transaction followed by a syndication transaction. The rule in the proposed regulations for syndication transactions involving new or used property is explained later in the preamble.

B. Used Property

Pursuant to section 168(k)(2)(A)(ii) and (k)(2)(E)(ii), the proposed regulations provide that the acquisition of used property is eligible for the additional first year depreciation deduction if such acquisition meets the following requirements: (1) The property was not used by the taxpayer or a predecessor at any time prior to the acquisition; (2) the acquisition of the property meets the related party and carryover basis requirements of section 179(d)(2)(A), (B), and (C) and § 1.179–4(c)(1)(ii), (iii), and (iv), or (c)(2); and (3) the acquisition of the property meets the cost requirements of section 179(d)(3) and § 1.179–4(d).

i. Section 336(e) Election

A section 338 election and a section 336(e) election share many of the same characteristics. Therefore, the proposed regulations modify § 1.179–4(c)(2), which addresses the treatment of a section 338 election, to include property deemed to have been acquired by a new target corporation as a result of a section 336(e) election. Section 1.336–1(a)(1) provides that to the extent not inconsistent with section 336(e) or the regulations under section 336(e), the principles of section 338 and the regulations under section 338 apply for purposes of the regulations under section 336. To the extent that property is deemed to have been acquired by a "new target corporation," the Treasury Department and the IRS read § 1.179–4(c)(2), without modification, as applying to the deemed acquisition of property by a new target corporation as a result of a section 336(e) election, just as it applies as the result of a section 338 election. However, to remove any doubt, the proposed regulations modify § 1.179–4(c)(2) to provide that property deemed to have been acquired by a new target corporation as a result of a section 338 or a section 336(e) election will be considered acquired by purchase for purposes of section 179.

ii. Property Not Previously Used By The Taxpayer

The proposed regulations provide that the property is treated as used by the taxpayer or a predecessor at any time before its acquisition of the property only if the taxpayer or the predecessor had a depreciable interest in the property at any time before the acquisition, whether or not the taxpayer or the predecessor claimed depreciation deductions for the property. If a lessee has a depreciable interest in the improvements made to leased property and subsequently the lessee acquires the leased property of which the improvements are a part, the proposed regulations provide that the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the acquired property that is eligible for the additional first year depreciation deduction, assuming all other requirements are met, does not include the unadjusted depreciable basis attributable to the improvements.

Further, if a taxpayer initially acquires a depreciable interest in a portion of the property and subsequently acquires an additional depreciable interest in the same property, the proposed regulations also provide that such additional depreciable interest is not treated as being previously used by the taxpayer. However, if a taxpayer holds a depreciable interest in a portion of the property, sells that portion or a part of that portion, and subsequently acquires a depreciable interest in another portion of the same property, the proposed regulations provide that the taxpayer will be treated as previously having a depreciable interest in the property up to the amount of the portion for which the taxpayer held a depreciable interest in the property before the sale.

The Treasury Department and the IRS request comments on whether a safe harbor should be provided on how many taxable years a taxpayer or a predecessor should look back to determine if the taxpayer or the predecessor previously had a depreciable interest in the property. Such comments should provide the number of taxable years recommended for the look-back period and the reasoning for such number.

iii. Rules Applying to Consolidated Groups

Members of a consolidated group generally are treated as separate taxpayers. See *Woolford Realty Co. v. Rose*, 286 U.S. 319, 328 (1932) ("[a] corporation does not cease to be [a taxpayer] by affiliating with another"). However, the Treasury Department and the IRS believe that the additional first year depreciation deduction should not be permitted to members of a consolidated group when property is disposed of by one member of a consolidated group outside the group and subsequently acquired by another member of the same group because permitting such a deduction would not clearly reflect the group's income tax liability. See section 1502 (permitting consolidated group regulations different from the rules of chapter 1 of subtitle A of the Code otherwise applicable to separate corporations to clearly reflect the income tax liability of a consolidated group or each member of the group). To implement this position, these proposed regulations treat a member of a consolidated group as previously having a depreciable interest in all property in which the consolidated group is treated as previously having a depreciable interest. For purposes of this rule, a consolidated group will be treated as having a depreciable interest in property if any current or previous member of the group had a depreciable interest in the property while a member of the group.

The Treasury Department and the IRS also believe that the additional first year depreciation deduction should not be allowed when, as part of a series of related transactions, one or more members of a consolidated group acquire both the stock of a corporation that previously had a depreciable interest in the property and the property itself. Assume a corporation (the selling corporation) has a depreciable interest in property and sells it to an unrelated party. Subsequently, as part of a series of related transactions, a member of a consolidated group, unrelated to the selling corporation, acquires the property and either that member or a different member of the group acquires the stock of the selling corporation. In substance, the series of transactions is the same as if the selling corporation reacquired the property and then transferred it to another member of the group, in which case the additional first year depreciation deduction would not be allowed. Accordingly, these proposed regulations deny the deduction in such circumstances.

Additionally, if the acquisition of property is part of a series of related transactions that also includes one or more transactions in which the transferee of the property ceases to be a member of a consolidated group, then whether the taxpayer is a member of a consolidated group is tested immediately after the last transaction in the series.

iv. Series of Related Transactions

In determining whether property meets the requirements of section 168(k)(2)(E)(ii), the Treasury Department and the IRS believe that the ordering of steps, or the use of an unrelated intermediary, in a series of related transactions should not control. For example, if a father buys and places equipment in service for use in the father's trade or business and subsequently the father sells the equipment to his daughter for use in her trade or business, the father and daughter are related parties under section 179(d)(2)(A) and § 1.179–4(c)(1)(ii) and therefore, the daughter's acquisition of the equipment is not eligible for the additional first year depreciation deduction. However, if in a series of related transactions, the father sells the equipment to an unrelated party and then the unrelated party sells the equipment to the father's daughter, the daughter's acquisition of the equipment from the unrelated party, absent the rule in the proposed regulations, is eligible for the additional first year depreciation deduction (assuming all other requirements are met). Thus, the proposed regulations provide that in the case of a series of related transactions, the transfer of the property will be treated as directly transferred from the original transferor to the ultimate transferee, and the relation between the original transferor and the ultimate transferee is tested immediately after the last transaction in the series.

C. Application to Partnerships

On September 8, 2003, the Treasury Department and the IRS published temporary regulations (T.D. 9091, 2003–2 C.B. 939) in the **Federal Register** (68 FR 52986) relating to the additional first year depreciation deduction provisions of sections 168(k) and 1400L(b) (before amendment by sections 403 and 408 of the Working Families Tax Relief Act of 2004). Those regulations provided that any increase in the basis of qualified property due to a section 754 election generally is not eligible for the additional first year depreciation deduction. The preamble to those regulations explained that any increase in basis due to a section 754 election does not satisfy the original use requirement. The final regulations (T.D. 9283, 2006–2 C.B. 633, 642–43) published in the **Federal Register** on August 31, 2006 (71 FR 51738) retained the rule for increases in basis due to section 754 elections at § 1.168(k)–1(f)(9). Because the Act amended section 168(k) to allow the additional first year depreciation deduction for certain used property in addition to new property, the Treasury Department and the IRS have reconsidered whether basis adjustments under sections 734(b) and 743(b) now qualify for the additional first year depreciation deduction. The Treasury Department and the IRS also have considered whether certain section 704(c) adjustments as well as the basis of distributed property determined under section 732 should qualify for the additional first year depreciation deduction.

i. Section 704(c) Remedial Allocations

Section 1.704–3(d)(2) provides, in part, that under the remedial allocation method, the portion of a partnership's book basis in contributed property that exceeds its adjusted tax basis is recovered using any recovery period and depreciation (or other cost recovery) method available to the partnership for newly purchased property (of the same type as the contributed property) that is placed in service at the time of contribution. The proposed regulations provide that remedial allocations under section 704(c) do not qualify for the additional first year depreciation deduction under section 168(k).

Notwithstanding the language of § 1.704–3(d)(2) that any method available to the partnership for newly purchased property may be used to recover the portion of the partnership's book basis in contributed property that exceeds its adjusted tax basis, remedial allocations do not meet the requirements of section 168(k)(2)(E)(ii). Because the underlying property is contributed to the partnership in a section 721 transaction, the partnership's basis in the property is determined by reference to the contributing partner's basis in the property, which violates sections 179(d)(2)(C) and 168(k)(2)(E)(ii)(II). In addition, the partnership has already had a depreciable interest in the contributed property at the time the remedial allocation is made, which is in violation of section 168(k)(2)(E)(ii)(I) as well as the original use requirement.

The same rule applies in the case of revaluations of partnership property (reverse section 704(c) allocations).

ii. Zero Basis Property

Section 1.704–1(b)(2)(iv)(*g*)(*3*) provides that, if partnership property has a zero adjusted tax basis, any reasonable method may be used to determine the book depreciation, depletion, or amortization of the property. The proposed regulations provide that the additional first year depreciation deduction under section 168(k) will not be allowed on property contributed to the partnership with a zero adjusted tax basis because, with the additional first year depreciation deduction, the partners have the potential to shift built-in gain among partners.

iii. Basis Determined Under Section 732

Section 732(a)(1) provides that the basis of property (other than money) distributed by a partnership to a partner other than in liquidation of the partner's interest is its adjusted basis to the partnership immediately before the distribution. Section 732(a)(2) provides that the basis determined under section 732(a)(1) shall not exceed the adjusted basis of the partner's interest in the partnership reduced by any money distributed in the same transaction. Section 732(b) provides that the basis of property (other than money) distributed by a partnership to a partner in liquidation of the partner's interest is equal to the adjusted basis of the partner's interest in the partnership reduced by any money distributed in the same transaction.

Property distributed by a partnership to a partner fails to satisfy the original use requirement because the partnership used the property prior to the distribution. Distributed property also fails to satisfy the acquisition requirements of section 168(k)(2)(E)(ii)(II). Any portion of basis determined by section 732(a)(1) fails to satisfy section 179(d)(2)(C) because it is determined by reference to the partnership's basis in the distributed property. Similarly, any portion of basis determined by section 732(a)(2) or (b) fails to satisfy section 179(d)(3) because it is determined by reference to the distributee partner's basis in its partnership interest (reduced by any money distributed in the same transaction).

iv. Section 734(b) Adjustments

Section 734(b)(1) provides that, in the case of a distribution of property to a partner with respect to which a section 754 election is in effect (or when there is a substantial basis reduction under section 734(d)), the partnership will increase the adjusted basis of partnership property by the sum of (A) the amount of any gain recognized to the distributee partner under section 731(a)(1), and (B) in the case of distributed property to which section 732(a)(2) or (b) applies, the excess of the adjusted basis of the distributed property to the partnership immediately before the distribution (as adjusted by section 732(d)) over the basis of the distributed property to the distributee, as determined under section 732.

Because a section 734(b) basis adjustment is made to the basis of partnership property (i.e., non-partner specific basis) and the partnership used the property prior to the partnership distribution giving rise to the basis adjustment, a section 734(b) basis adjustment fails the original use clause in section 168(k)(2)(A)(ii) and also fails the used property requirement in section 168(k)(2)(E)(ii)(I). The proposed regulations therefore provide that section 734(b) basis adjustments are not eligible for the additional first year depreciation deduction.

v. Section 743(b) Adjustments

Section 743(b)(1) provides that, in the case of a transfer of a partnership interest, either by sale or exchange or as a result of the death of a partner, a partnership that has a section 754 election in effect (or if there is a substantial built-in loss immediately after such partnership interest transfer under section 743(d)), will increase the adjusted basis of partnership property by the excess of the transferee's basis in the transferred partnership interest over the transferee's share of the adjusted basis of partnership's property. This increase is an adjustment to the basis of partnership property with respect to the transferee partner only and, therefore, is a partner specific basis adjustment to partnership property. The section 743(b) basis adjustment is allocated among partnership properties under section 755. As stated above, prior to the Act, a section 743(b) basis adjustment would always fail the original use requirement in section 168(k)(2)(A)(ii) because partnership property to which a section 743(b) basis adjustment relates would have been previously used by the partnership and its partners prior to the transfer that gave rise to the section 743(b) adjustment. After the Act, while a section 743(b) basis adjustment still fails the original use clause in section 168(k)(2)(A)(ii), a transaction giving rise to a section 743(b) basis adjustment may satisfy the used property clause in section 168(k)(2)(A)(ii) because of the used property acquisition requirements of section 168(k)(2)(E)(ii), depending on the facts and circumstances.

Because a section 743(b) basis adjustment is a partner specific basis adjustment to partnership property, the proposed regulations take an aggregate view and provide that, in determining whether a section 743(b) basis adjustment meets the used property acquisition requirements of section 168(k)(2)(E)(ii), each partner is treated as having owned and used the partner's proportionate share of partnership property. In the case of a transfer of a partnership interest, section 168(k)(2)(E)(ii)(I) will be satisfied if the partner acquiring the interest, or a predecessor of such partner, has not used the portion of the partnership property to which the section 743(b) basis adjustment relates at any time prior to the acquisition (that is, the transferee has not used the transferor's portion of partnership property prior to the acquisition), notwithstanding the fact that the partnership itself has previously used the property. Similarly, for purposes of applying section 179(d)(2)(A), (B), and (C), the partner acquiring a partnership interest is treated as acquiring a portion of partnership property, and the partner who is transferring a partnership interest is treated as the person from whom the property is acquired.

For example, the relationship between the transferor partner and the transferee partner must not be a prohibited relationship under section 179(d)(2)(A). Also, the transferor partner and transferee partner may not be part of the same controlled group under section 179(d)(2)(B). Finally, the transferee partner's basis in the transferred partnership interest may not be determined in whole or in part by reference to the transferor's adjusted basis, or under section 1014.

The same result will apply regardless of whether the transferee partner is a new partner or an existing partner purchasing an additional partnership interest from another partner. Assuming that the transferor partner's specific interest in partnership property that is acquired by the transferee partner has not previously been used by the transferee partner or a predecessor, the corresponding section 743(b) basis adjustment will be eligible for the additional first year depreciation deduction in the hands of the transferee partner, provided all other requirements of section 168(k) are satisfied (and assuming § 1.743–1(j)(4)(i)(B)(*2*) does not apply). This treatment is appropriate notwithstanding the fact that the transferee partner may have an existing interest in the underlying partnership property, because the transferee's existing interest in the underlying partnership property is distinct from the interest being transferred.

Finally, the proposed regulations provide that a section 743(b) basis adjustment in a class of property (not including the property class for section 743(b) basis adjustments) may be recovered using the additional first year depreciation deduction under section 168(k) without regard to whether the partnership elects out of the additional first year depreciation deduction under section 168(k)(7) for all other qualified property in the same class of property and placed in service in the same taxable year. Similarly, a partnership may make the election out of the additional first year depreciation deduction under section 168(k)(7) for a section 743(b) basis adjustment in a class of property (not including the property class for section 743(b) basis adjustments), and this election will not bind the partnership to such election for all other qualified property of the partnership in the same class of property and placed in service in the same taxable year.

D. Syndication Transaction

The syndication transaction rule in the proposed regulations is based on the rules in section 168(k)(2)(E)(iii) for syndication transactions. For new or used property, the proposed regulations provide that if (1) a lessor has a depreciable interest in the property and the lessor and any predecessor did not previously have a depreciable interest in the property, (2) the property is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor (or, in the case of multiple units of property subject to the same lease, within three months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and (3) the user (lessee) of the property after the last sale during the three-month period remains the same as when the property was originally placed in service by the lessor, then the purchaser of the property in the last sale during the three-month period is considered the taxpayer that acquired the property and the taxpayer that originally placed the property in service, but not earlier than the date of the last sale. Thus, if a transaction is within the rules described above, the purchaser of the property in the last sale during the three-month period is eligible to claim the additional first year depreciation for the property (assuming all requirements are met), and the earlier purchasers of the property are not.

4. *Placed-in-Service Date*

The proposed regulations generally retain the placed-in-service date rules in § 1.168(k)–1(b)(5). Pursuant to the effective date in section 13201(h) of the Act and section 168(k)(2)(A)(iii) and (k)(2)(B)(i)(II), the proposed regulations provide that qualified property must be placed in service by the taxpayer after September 27, 2017, and before January 1, 2027, or, in the case of property described in section 168(k)(2)(B) or (C), before January 1, 2028. Because section 13201 of the Act removed the rules regarding sale-leaseback transactions, the proposed regulations do not retain the placed-in-service date rules in § 1.168(k)–1(b)(5)(ii)(A) and (C) regarding such transactions, including a sale-leaseback transaction followed by a syndication transaction.

Further, the proposed regulations provide rules for specified plants. Pursuant to section 168(k)(5)(A), if the taxpayer has made an election to apply section 168(k)(5) for a specified plant, the proposed regulations provide that the specified plant must be planted before January 1, 2027, or grafted before January 1, 2027, to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business, as defined in section 263A(e)(4).

Pursuant to section 168(k)(2)(H), the proposed regulations also provide that a qualified film or television production is treated as placed in service at the time of initial release or broadcast as defined under § 1.181–1(a)(7), and a qualified live theatrical production is treated as placed in service at the time of the initial live staged performance. The proposed regulations also provide that the initial live staged performance of a qualified live theatrical production is the first commercial exhibition of a production to an audience. An initial live staged performance does not include limited exhibition, prior to commercial exhibition to general audiences, if the limited exhibition is primarily for purposes of publicity, determining the need for further production activity, or raising funds for the completion of production. For example, the initial live staged performance does not include a preview of the production if the preview is primarily to determine the need for further production activity.

5. *Date of Acquisition*

The proposed regulations provide rules applicable to the acquisition requirements of the effective date under section 13201(h) of the Act. The proposed regulations provide that these rules apply to all property, including self-constructed property or property described in section 168(k)(2)(B) or (C).

A. Written Binding Contract

Pursuant to section 13201(h)(1)(A) of the Act, the proposed regulations provide that the property must be acquired by the taxpayer after September 27, 2017, or, acquired by the taxpayer pursuant to a written binding contract entered into by the taxpayer after September 27, 2017. Because of the clear language of section 13201(h)(1) of the Act regarding written binding contracts, the proposed regulations also provide that property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income is acquired pursuant to a written binding contract. Further, if the written binding contract states the date on which the contract was entered into and a closing date, delivery date, or other similar date, the date on which the contract was entered into is the date the taxpayer acquired the property. The proposed regulations retain the rules in § 1.168(k)–1(b)(4)(ii) defining a binding contract. Additionally, the proposed regulations provide that a letter of intent for an acquisition is not a binding contract.

B. Self-Constructed Property

If a taxpayer manufactures, constructs, or produces property for its own use, the Treasury Department and the IRS recognize that the written binding contract rule in section 13201(h)(1) of the Act does not apply. In such case, the proposed regulations provide that the acquisition rules in section 13201(h)(1) of the Act are treated as met if the taxpayer begins manufacturing, constructing, or producing the property after September 27, 2017. The proposed regulations provide rules similar to those in § 1.168(k)–1(b)(4)(iii)(B) for defining when manufacturing, construction, or production begins, including the safe harbor, and in § 1.168(k)–1(b)(4)(iii)(C) for a contract to acquire, or for the manufacture, construction, or production of, a component of the larger self-constructed property. As stated in the preceding paragraph, these self-constructed rules in the proposed regulations do not apply to property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract that is entered into prior to the manufacture, construction, or production of the property.

C. Qualified Film, Television, or Live Theatrical Productions

The proposed regulations also provide rules for qualified film, television, or live theatrical productions. For purposes of section 13201(h)(1)(A) of the Act, the proposed regulations provide that a qualified film or television production is treated as acquired on the date principal photography commences, and a qualified live theatrical production is treated as acquired on the date when all of the necessary elements for producing the live theatrical production are secured. These elements may include a script, financing, actors, set, scenic and costume designs, advertising agents, music, and lighting.

D. Specified Plants

Pursuant to section 13201(h)(2) of the Act, if the taxpayer makes an election to apply section 168(k)(5) for a specified plant, the proposed regulations provide that the specified plant must be planted after September 27, 2017, or grafted after September 27, 2017, to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business, as defined in section 263A(e)(4).

6. *Longer Production Period Property or Certain Aircraft Property*

The proposed regulations provide rules for determining when longer production period property or certain aircraft property described in section 168(k)(2)(B) or (C) meets the acquisition requirements of section 168(k)(2)(B)(i)(III) or (k)(2)(C)(i), as applicable. Pursuant to section 168(k)(2)(B)(i)(III) and (k)(2)(C)(i), the proposed regulations provide that property described in section 168(k)(2)(B) or (C) must be acquired by the taxpayer before January 1, 2027, or acquired by the taxpayer pursuant to a written binding contract that is entered into before January 1, 2027. These acquisition requirements are in addition to those in section 13201(h)(1) of the Act, which require acquisition to occur after September 27, 2017.

The proposed regulations provide that the written binding contract rules for longer production period property and certain aircraft property are the same rules that apply for purposes of determining whether the acquisition requirements of section 13201(h)(1) of the Act are met.

With respect to self-constructed property described in section 168(k)(2)(B) or (C), the proposed regulations follow the acquisition rule in section 168(k)(2)(E)(i) for self-constructed property and provide that the acquisition requirements of section 168(k)(2)(B)(i)(III) or (k)(2)(C)(i), as applicable, are met if a taxpayer manufactures, constructs, or produces the property for its own use and such manufacturing, construction, or productions begins before January 1, 2027. Further, only for purposes of section 168(k)(2)(B)(i)(III) and (k)(2)(C)(i), the proposed regulations provide that property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income is considered to be manufactured, constructed, or produced by the taxpayer. The proposed regulations also provide rules similar to those in § 1.168(k)–1(b)(4)(iii)(B) for defining when manufacturing, construction, or production begins, including the same safe harbor, and in § 1.168(k)–1(b)(4)(iii)(C) for a contract to acquire, or for the manufacture, construction, or production of, a component of the larger self-constructed property.

7. *Computation of Additional First Year Depreciation Deduction and Otherwise Allowable Depreciation*

Pursuant to section 168(k)(1)(A), the proposed regulations provide that the allowable additional first year depreciation deduction for qualified property is equal to the applicable percentage (as defined in section 168(k)(6)) of the unadjusted depreciable basis (as defined in § 1.168(b)–1(a)(3)) of the property. For qualified property described in section 168(k)(2)(B), the unadjusted depreciable basis (as defined in § 1.168(b)–1(a)(3)) of the property is limited to the property's basis attributable to manufacture, construction, or production of the property before January 1, 2027, as provided in section 168(k)(2)(B)(ii).

Pursuant to section 168(k)(2)(G), the proposed regulations also provide that the additional first year depreciation deduction is allowed for both regular tax and alternative minimum tax (AMT) purposes. However, for AMT purposes, the amount of the additional first year depreciation deduction is based on the unadjusted depreciable basis of the property for AMT purposes. The amount of the additional first year depreciation deduction is not affected by a taxable year of less than 12 months for either regular or AMT purposes.

The proposed regulations provide rules similar to those in § 1.168(k)–1(d)(2) for determining the amount of depreciation otherwise allowable for qualified property. That is, before determining the amount of depreciation otherwise allowable for qualified property, the proposed regulations require the taxpayer to first reduce the unadjusted depreciable basis (as defined in § 1.168(b)–1(a)(3)) of the property by the amount of the additional first year depreciation deduction allowed or allowable, whichever is greater (the remaining adjusted depreciable basis), as provided in section 168(k)(1)(B). Then, the remaining adjusted depreciable basis is depreciated using the applicable depreciation provisions of the Code for the property (for example, section 168 for MACRS property, section 167(f)(1) for computer software, and section 167 for film, television, or theatrical productions). This amount of depreciation is allowed for both regular tax and AMT purposes, and is affected by a taxable year of less than 12 months. However, for AMT purposes, the amount of depreciation allowed is determined by calculating the remaining adjusted depreciable basis of the property for AMT purposes and using the same depreciation method, recovery period, and convention that applies to the property for regular tax purposes. If a taxpayer uses the optional depreciation tables in Rev. Proc. 87–57 (1987–2 C.B. 687) to compute depreciation for qualified property that is MACRS property, the proposed regulations also provide that the remaining adjusted depreciable basis of the property is the basis to which the annual depreciation rates in those tables apply.

8. *Special Rules*

The proposed regulations also provide rules similar to those in § 1.168(k)–1(f) for certain situations. However, the special rules in § 1.168(k)–1(f)(9) regarding the increase in basis due to a section 754 election are addressed in the proposed regulations regarding the used property acquisition requirements. Further, the special rules in § 1.168(k)–1(f)(1)(iii) regarding property placed in service and transferred in a section 168(i)(7) transaction in the same taxable year, and in § 1.168(k)–1(f)(5) regarding like-kind exchanges or involuntary conversions, are updated to reflect the used property acquisition requirements in section 168(k)(2)(E)(ii). The special rules in the proposed regulations also are updated to reflect the applicable dates under section 168(k), and the changes by the Act to technical terminations of partnerships and the rehabilitation credit.

The proposed regulations provide rules for the following situations: (1) Qualified property placed in service or planted or grafted, as applicable, and disposed of in the same taxable year; (2) redetermination of basis of qualified property; (3) recapture of additional first year depreciation for purposes of section 1245 and section 1250; (4) a certified pollution control facility that is qualified property; (5) like-kind exchanges and involuntary conversions of qualified property; (6) a change in use of qualified property; (7) the computation of earnings and profits; (8) the increase in the limitation of the amount of depreciation for passenger automobiles; (9) the rehabilitation credit under section 47; and (10) computation of depreciation for purposes of section 514(a)(3).

The proposed regulations provide a special rule for qualified property that is placed in service in a taxable year and then contributed to a partnership under section 721(a) in the same taxable year when one of the other partners previously had a depreciable interest in the property. Situation 1 of Rev. Rul. 99–5 (1999–1 C.B. 434) is an example of such a fact pattern. Under § 1.168(k)–1(f)(1)(iii) and its cross-reference to § 1.168(d)–1(b)(7)(ii), the additional first year depreciation deduction associated with the contributed property would be allocated between the contributing partner and the partnership based on the proportionate time the contributing partner and the partnership held the property throughout the taxable year. The partnership could then allocate a portion of the deduction to the partner with a previous depreciable interest in the property. The Treasury Department and the IRS believe that allocating any portion of the deduction to a partner who previously had a depreciable interest in the property would be inconsistent with section 168(k)(2)(E)(ii)(I). Therefore, the proposed regulations provide that, in this situation, the additional first year depreciation deduction with respect to the contributed property is not allocated under the general rules of § 1.168(d)–1(b)(7)(ii). Instead, the additional first year depreciation deduction is allocated entirely to the contributing partner prior to the section 721(a) transaction and not to the partnership.

With respect to like-kind exchanges and involuntary conversions, § 1.168(k)–1(f)(5) provides that the exchanged basis and excess basis, if any, of the replacement property is eligible for the additional first year depreciation deduction if the replacement property is qualified property. The proposed regulations retain this rule if the replacement property also meets the original use requirement. Pursuant to section 168(k)(2)(E)(ii)(II) and its cross-reference to section 179(d)(3), the proposed regulations also provide that only the excess basis, if any, of the replacement property is eligible for the additional first year depreciation deduction if the replacement property is qualified property and also meets the used property acquisition requirements. These rules also apply when a taxpayer makes the election under § 1.168(i)–6(i)(1) to treat, for depreciation purposes only, the total of the exchanged basis and excess basis, if any, in the replacement MACRS property as property placed in service by the taxpayer at the time of replacement and the adjusted depreciable basis of the relinquished MACRS property as disposed of by the taxpayer at the time of disposition. The proposed regulations also retain the other rules in § 1.168(k)–1(f)(5) for like-kind exchanges and involuntary conversions, but update the definitions to be consistent with the definitions in § 1.168(i)–6, which addresses how to compute depreciation of property involved in like-kind exchanges or involuntary conversions.

Proposed Applicability Date

These regulations are proposed to apply to qualified property placed in service or planted or grafted, as applicable, by the taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Pending the issuance of the final regulations, a taxpayer may choose to apply these proposed regulations to qualified property acquired and placed in service or planted or grafted, as applicable, after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017.

Special Analyses

The Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, has waived review of this proposed rule in accordance with section 6(a)(3)(A) of Executive Order 12866. OIRA will subsequently make a significance determination of the final rule, pursuant to section 3(f) of Executive Order (EO) 12866 and the April 11, 2018, Memorandum of Agreement between the Department of Treasury and the Office of Management and Budget (OMB).

The proposed regulations do not impose a collection of information on small entities and provide clarifying rules for taxpayers to enjoy the tax benefit of 100-percent additional first year depreciation as provided by the amendments to section 168 by the Act. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *http://www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Kathleen Reed and Elizabeth R. Binder of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability

The IRS Revenue Procedures and Revenue Rulings cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov*.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for § 1.168(k)–2 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

*****

Section 1.168(k)–2 also issued under 26 U.S.C. 1502.

*****

Par. 2. Section 1.48–12 is amended by:

1. In the last sentence in paragraph (a)(2)(i), removing "The last sentence" and adding "The next to last sentence" in its place;

2. Adding two sentences at the end of paragraph (a)(2)(i); and

3. Adding a sentence to the end of paragraph (c)(8)(i).

The additions read as follows:

§ 1.48–12 Qualified rehabilitated building; expenditures incurred after December 31, 1981.

(a) * * *

(2) * * *

(i) * * * The last sentence of paragraph (c)(8)(i) of this section applies to qualified rehabilitation expenditures that are qualified property under section 168(k)(2) and placed in service by a taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, a taxpayer may rely on the last sentence in paragraph (c)(8)(i) of this section in these proposed regulations for qualified rehabilitation expenditures that are qualified property under section 168(k)(2) and acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

(c) * * *

(8) * * *

(i) * * * Further, see § 1.168(k)–2(f)(9) if the qualified rehabilitation expenditures are qualified property under section 168(k), as amended by the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017)).

* * * * *

Par. 3. Section 1.167(a)–14 is amended by:

1. In the third sentence in paragraph (b)(1), removing "under section 168(k)(2) or § 1.168(k)–1," and adding "under section 168(k)(2) and § 1.168(k)–1 or 1.168(k)–2, as applicable," in its place;

2. In the last sentence in paragraph (e)(3), removing "and before 2010"; and

3. Adding two sentences at the end of paragraph (e)(3).

The addition reads as follows:

§ 1.167(a)–14 Treatment of certain intangible property excluded from section 197.

* * * * *

(e) * * *

(3) * * * The language "or § 1.168(k)–2, as applicable," in the third sentence in paragraph (b)(1) of this section applies to computer software that is qualified property under section 168(k)(2) and placed in service by a taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, a taxpayer may rely on the language "or § 1.168(k)–2, as applicable," in the third sentence in paragraph (b)(1) of this section in these proposed regulations for computer software that is qualified property under section 168(k)(2) and acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 4. Section 1.168(b)–1 is amended by adding paragraph (a)(5) and revising paragraph (b) to read as follows:

§ 1.168(b)–1 Definitions.

(a) * * *

(5) *Qualified improvement property*—(i) Is any improvement that is section 1250 property to an interior portion of a building, as defined in § 1.48–1(e)(1), that is nonresidential real property, as defined in section 168(e)(2)(B), if the improvement is placed in service by the taxpayer after the date the building was first placed in service by any person and if—

(A) For purposes of section 168(e)(6), the improvement is placed in service by the taxpayer after December 31, 2017;

(B) For purposes of section 168(k)(3) as in effect on the day before amendment by section 13204(a)(4)(B) of the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017)) ("Act"), the improvement is acquired by the taxpayer before September 28, 2017, the improvement is placed in service by the taxpayer before January 1, 2018, and the improvement meets the original use requirement in section 168(k)(2)(A)(ii) as in effect on the day before amendment by section 13201(c)(1) of the Act; or

(C) For purposes of section 168(k)(3) as in effect on the day before amendment by section 13204(a)(4)(B) of the Act, the improvement is acquired by the taxpayer after September 27, 2017; the improvement is placed in service by the taxpayer after September 27, 2017, and before January 1, 2018; and the improvement meets the requirements in section 168(k)(2)(A)(ii) as amended by section 13201(c)(1) of the Act; and

(ii) Does not include any qualified improvement for which an expenditure is attributable to—

(A) The enlargement, as defined in § 1.48–12(c)(10), of the building;

(B) Any elevator or escalator, as defined in § 1.48–1(m)(2); or

(C) The internal structural framework, as defined in § 1.48–12(b)(3)(iii), of the building.

(b) *Effective date*—(1) *In general*. Except as provided in paragraph (b)(2) of this section, this section is applicable on or after February 27, 2004.

(2) *Application of paragraph (a)(5) of this section*—(i) *In general*. Except as provided in paragraph (b)(2)(ii) of this section, paragraph (a)(5) of this section is applicable on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

(ii) *Early application of paragraph (a)(5) of this section*. A taxpayer may rely on the provisions of paragraph (a)(5) of this section in these proposed regulations for the taxpayer's taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 5. Section 1.168(d)–1 is amended by:

1. Adding a sentence at the end of paragraph (b)(3)(ii);

2. Adding a sentence at the end of paragraph (b)(7)(ii); and

3. Adding two sentences at the end of paragraph (d)(2).

The additions read as follows:

§ 1.168(d)–1 Applicable conventions—half-year and mid-quarter conventions.

* * * * *

(b) * * *

(3) * * *

(ii) * * * Further, see § 1.168(k)–2(f)(1) for rules relating to qualified property under section 168(k), as amended by the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017)), that is placed in service by the taxpayer in the same taxable year in which either a partnership is terminated as a result of a technical termination under section 708(b)(1)(B) or the property is transferred in a transaction described in section 168(i)(7).

* * * * *

(7) * * *

(ii) * * * However, see § 1.168(k)–2(f)(1)(iii) for a special rule regarding the allocation of the additional first year depreciation deduction in the case of certain contributions of property to a partnership under section 721.

* * * * *

(d) * * *

(2) * * * The last sentences in paragraphs (b)(3)(ii) and (b)(7)(ii) of this section apply to qualified property under section 168(k)(2) placed in service by a taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, a taxpayer may rely on the last sentences in paragraphs (b)(3)(ii) and (b)(7)(ii) of this section in these proposed regulations for qualified property under section 168(k)(2) acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Par. 6. Section 1.168(i)–4 is amended by:

1. In the penultimate sentence in paragraph (b)(1), removing "§§ 1.168(k)–1T(f)(6)(iii) and 1.1400L(b)–1T(f)(6)" and adding "§ 1.168(k)–1(f)(6)(iii) or 1.168(k)–2(f)(6)(iii), as applicable, and § 1.1400L(b)–1(f)(6)" in its place;

2. In the fifth sentence in paragraph (c), removing "§§ 1.168(k)–1T(f)(6)(ii) and 1.1400L(b)–1T(f)(6)" and adding "§ 1.168(k)–1(f)(6)(ii) or 1.168(k)–2(f)(6)(ii), as applicable, and § 1.1400L(b)–1(f)(6)" in its place;

3. In the second sentence in paragraph (d)(3)(i)(C), removing "§§ 1.168(k)–1T(f)(6)(iv) and 1.400L(b)–1T(f)(6)" and adding "§ 1.168(k)–1(f)(6)(iv) or 1.168(k)–2(f)(6)(iv), as applicable, and § 1.400L(b)–1(f)(6)" in its place;

4. In the last sentence in paragraph (d)(4)(i), removing "§§ 1.168(k)–1T(f)(6)(iv) and 1.1400L(b)–1T(f)(6)" and adding "§ 1.168(k)–1(f)(6)(iv) or 1.168(k)–2(f)(6)(iv), as applicable, and § 1.400L(b)–1(f)(6)" in its place;

5. Revising the first sentence in paragraph (g)(1); and

6. Redesignating paragraph (g)(2) as paragraph (g)(3) and adding new paragraph (g)(2).

The addition and revision read as follows:

§ 1.168(i)–4 Changes in use.

* * * * *

(g) * * *

(1) * * * Except as provided in paragraph (g)(2) of this section, this section applies to any change in the use of MACRS property in a taxable year ending on or after June 17, 2004. * * *

(2) *Qualified property under section 168(k) acquired and placed in service after September 27, 2017*. The language "or § 1.168(k)–2(f)(6)(iii), as applicable" in paragraph (b)(1) of this section, the language "or § 1.168(k)–2(f)(6)(ii), as applicable" in paragraph (c) of this section, and the language "or § 1.168(k)–2(f)(6)(iv), as applicable" in paragraphs (d)(3)(i)(C) and (d)(4)(i) of this section applies to any change in use of MACRS property, which is qualified property under section 168(k)(2), by a taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, a taxpayer may rely on the language "or § 1.168(k)–2(f)(6)(iii), as applicable" in paragraph (b)(1) of this section, the language "or § 1.168(k)–2(f)(6)(ii), as appli-

cable" in paragraph (c) of this section, and the language "or § 1.168(k)–2(f)(6)(iv), as applicable" in paragraphs (d)(3)(i)(C) and (d)(4)(i) of this section in these proposed regulations for any change in use of MACRS property, which is qualified property under section 168(k)(2) and acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Par. 7. Section 1.168(i)–6 is amended by:

1. In paragraph (d)(3)(ii)(B), removing "1.168(k)–1(f)(5) or § 1.1400L(b)–1(f)(5)" wherever it appears and adding "1.168(k)–1(f)(5), 1.168(k)–2(f)(5), or 1.1400L(b)–1(f)(5)" in its place;
2. In paragraph (d)(3)(ii)(E), removing "1.168(k)–1(f)(5) or § 1.1400L(b)–1(f)(5)" and adding "1.168(k)–1(f)(5), 1.168(k)–2(f)(5), or 1.1400L(b)–1(f)(5)" in its place;
3. Adding a sentence at the end of paragraph (d)(4);
4. Adding a sentence at the end of paragraph (h); and
5. Adding paragraph (k)(4).

The additions read as follows:

§ 1.168(i)–6 Like-kind exchanges and involuntary conversions.

* * * * *

(d) * * *

(4) * * * Further, see § 1.168(k)–2(f)(5)(iv) for replacement MACRS property that is qualified property under section 168(k), as amended by the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017)).

* * * * *

(h) * * * Further, see § 1.168(k)–2(f)(5) for qualified property under section 168(k), as amended by the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017)).

* * * * *

(k) * * *

(4) *Qualified property under section 168(k) acquired and placed in service after September 27, 2017*. The language "1.168(k)–2(f)(5)," in paragraphs (d)(3)(ii)(B) and (E) of this section and the last sentences in paragraphs (d)(4) and (h) of this section apply to a like-kind exchange or an involuntary conversion of MACRS property, which is qualified property under section 168(k)(2), for which the time of replacement occurs on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, a taxpayer may rely on the language "1.168(k)–2(f)(5)," in paragraphs (d)(3)(ii)(B) and (E) of this section and the last sentences in paragraphs (d)(4) and (h) of this section in these proposed regulations for a like-kind exchange or an involuntary conversion of MACRS property, which is qualified property under section 168(k)(2), for which the time of replacement occurs on or after September 28, 2017, and occurs before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 8. Section 1.168(k)–0 is amended by revising the introductory text and adding an entry for § 1.168(k)–2 in numerical order to the table of contents to read as follows:

§ 1.168(k)–0 Table of contents.

This section lists the major paragraphs contained in §§ 1.168(k)–1 and 1.168(k)–2.

* * * * *

§ 1.168(k)–2 Additional first year depreciation deduction for property acquired and placed in service after September 27, 2017.

(a) Scope and definitions.
(1) Scope.
(2) Definitions.
(b) Qualified property.
(1) In general.
(2) Description of qualified property.
(i) In general.
(ii) Property not eligible for additional first year depreciation deduction.
(3) Original use or used property acquisition requirements.
(i) In general.
(ii) Original use.
(A) In general.
(B) Conversion to business or income-producing use.
(C) Fractional interests in property.
(iii) Used property acquisition requirements.
(A) In general.
(B) Property was not used by the taxpayer at any time prior to acquisition.
(C) Special rules for a series of related transactions.
(iv) Application to partnerships.
(A) Section 704(c) remedial allocations.
(B) Basis determined under section 732.
(C) Section 734(b) adjustments.
(D) Section 743(b) adjustments.
(v) Syndication transaction.
(vi) Examples.
(4) Placed-in-service date.
(i) In general.
(ii) Specified plant.
(iii) Qualified film, television, or live theatrical production.
(iv) Syndication transaction.
(v) Technical termination of a partnership.
(vi) Section 168(i)(7) transactions.
(5) Acquisition of property.
(i) In general.
(ii) Acquisition date.
(iii) Definition of binding contract.
(A) In general.
(B) Conditions.
(C) Options.
(D) Letter of intent.
(E) Supply agreements.
(F) Components.
(iv) Self-constructed property.
(A) In general.
(B) When does manufacture, construction, or production begin.
(C) Components of self-constructed property.
(v) Qualified film, television, or live theatrical production.
(vi) Specified plant.
(vii) Examples.
(c) Property described in section 168(k)(2)(B) or (C).
(1) In general.
(2) Definition of binding contract.
(3) Self-constructed property.
(i) In general.
(ii) When does manufacture, construction, or production begin.
(A) In general.
(B) Safe harbor.
(iii) Components of self-constructed property.

(A) Acquired components.
(B) Self-constructed components.
(iv) Examples.
(d) Computation of depreciation deduction for qualified property.
(1) Additional first year depreciation deduction.
(i) Allowable taxable year.
(ii) Computation.
(iii) Property described in section 168(k)(2)(B).
(iv) Alternative minimum tax.
(A) In general.
(B) Special rules.
(2) Otherwise allowable depreciation deduction.
(i) In general.
(ii) Alternative minimum tax.
(3) Examples.
(e) Elections under section 168(k).
(1) Election not to deduct additional first year depreciation.
(i) In general.
(ii) Definition of class of property.
(iii) Time and manner for making election.
(A) Time for making election.
(B) Manner of making election.
(iv) Failure to make election.
(2) Election to apply section 168(k)(5) for specified plants.
(i) In general.
(ii) Time and manner for making election.
(A) Time for making election.
(B) Manner of making election.
(iii) Failure to make election.
(3) Election for qualified property placed in service during the 2017 taxable year.
(i) In general.
(ii) Time and manner for making election.
(A) Time for making election.
(B) Manner of making election.
(iii) Failure to make election.
(4) Alternative minimum tax.
(5) Revocation of election.
(i) In general.
(ii) Automatic 6-month extension.
(f) Special rules.
(1) Property placed in service and disposed of in the same taxable year.
(i) In general.
(ii) Technical termination of a partnership.
(iii) Section 168(i)(7) transactions.
(iv) Examples.
(2) Redetermination of basis.
(i) Increase in basis.
(ii) Decrease in basis.
(iii) Definitions.
(iv) Examples.
(3) Sections 1245 and 1250 depreciation recapture.
(4) Coordination with section 169.
(5) Like-kind exchanges and involuntary conversions.
(i) Scope.
(ii) Definitions.
(iii) Computation.
(A) In general.
(B) Year of disposition and year of replacement.
(C) Property described in section 168(k)(2)(B).
(D) Effect of § 1.168(i)–6(i)(1) election.
(E) Alternative minimum tax.
(iv) Replacement MACRS property or replacement computer software that is acquired and placed in service before disposition of relinquished MACRS property or relinquished computer software.
(v) Examples.
(6) Change in use.
(i) Change in use of depreciable property.
(ii) Conversion to personal use.
(iii) Conversion to business or income-producing use.
(A) During the same taxable year.
(B) Subsequent to the acquisition year.
(iv) Depreciable property changes use subsequent to the placed-in-service year.
(v) Examples.
(7) Earnings and profits.
(8) Limitation of amount of depreciation for certain passenger automobiles.
(9) Coordination with section 47.
(i) In general.
(ii) Example.
(10) Coordination with section 514(a)(3).
(g) Applicability dates.
(1) In general.
(2) Early application.

Par. 9. Section 1.168(k)–2 is added to read as follows:

§ 1.168(k)–2 Additional first year depreciation deduction for property acquired and placed in service after September 27, 2017.

(a) *Scope and definitions*—(1) *Scope*. This section provides rules for determining the additional first year depreciation deduction allowable under section 168(k) for qualified property acquired and placed in service after September 27, 2017.

(2) *Definitions*. For purposes of this section—

(i) *Act* is the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017)); and

(ii) *Applicable percentage* is the percentage provided in section 168(k)(6).

(b) *Qualified property*—(1) *In general*. Qualified property is depreciable property, as defined in § 1.168(b)–1(a)(1), that meets all the following requirements in the first taxable year in which the property is subject to depreciation by the taxpayer whether or not depreciation deductions for the property are allowable:

(i) The requirements in § 1.168(k)–2(b)(2) (description of qualified property);

(ii) The requirements in § 1.168(k)–2(b)(3) (original use or used property acquisition requirements);

(iii) The requirements in § 1.168(k)–2(b)(4) (placed-in-service date); and

(iv) The requirements in § 1.168(k)–2(b)(5) (acquisition of property).

(2) *Description of qualified property*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (b)(2) if the property is—

(A) MACRS property, as defined in § 1.168(b)–1(a)(2), that has a recovery period of 20 years or less. For purposes of this paragraph (b)(2)(i)(A) and section 168(k)(2)(A)(i)(I), the recovery period is determined in accordance with section 168(c) regardless of any election made by the taxpayer under section 168(g)(7). This paragraph (b)(2)(i)(A) includes the following MACRS property that is acquired by the taxpayer after September 27, 2017, and placed in service by the taxpayer after September 27, 2017, and before January 1, 2018:

(*1*) Qualified leasehold improvement property as defined in section 168(e)(6) as in effect on the day before amendment by section 13204(a)(1) of the Act;

(*2*) Qualified restaurant property, as defined in section 168(e)(7) as in effect on the day before amendment by section 13204(a)(1) of the Act, that is qualified improvement property as defined in § 1.168(b)–1(a)(5)(i)(C) and (a)(5)(ii); and

(*3*) Qualified retail improvement property as defined in section 168(e)(8) as in effect on the day before amendment by section 13204(a)(1) of the Act;

(B) Computer software as defined in, and depreciated under, section 167(f)(1) and the regulations under section 167(f)(1);

(C) Water utility property as defined in section 168(e)(5) and depreciated under section 168;

(D) Qualified improvement property as defined in § 1.168(b)–1(a)(5)(i)(C) and (a)(5)(ii) and depreciated under section 168;

(E) Qualified film or television production, as defined in section 181(d) and § 1.181–3, for which a deduction would have been allowable under section 181 without regard to section 181(a)(2) and (g), or section 168(k);

(F) Qualified live theatrical production, as defined in section 181(e), for which a deduction would have been allowable under section 181 without regard to section 181(a)(2) and (g), or section 168(k); or

(G) A specified plant, as defined in section 168(k)(5)(B), for which the taxpayer has properly made an election to apply section 168(k)(5) for the taxable year in which the specified plant is planted, or grafted to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business, as defined in section 263A(e)(4) (for further guidance, see paragraph (e) of this section).

(ii) *Property not eligible for additional first year depreciation deduction*. Depreciable property will not meet the requirements of this paragraph (b)(2) if the property is—

(A) Described in section 168(f) (for example, automobiles for which the taxpayer uses the optional business standard mileage rate);

(B) Required to be depreciated under the alternative depreciation system of section 168(g) pursuant to section 168(g)(1)(A), (B), (C), (D), (F), or (G), or other provisions of the Internal Revenue Code (for example, property described in section 263A(e)(2)(A) if the taxpayer or any related person, as defined in section 263A(e)(2)(B), has made an election under section 263A(d)(3), or property described in section 280F(b)(1));

(C) Included in any class of property for which the taxpayer elects not to deduct the additional first year depreciation (for further guidance, see paragraph (e) of this section);

(D) A specified plant that is placed in service by the taxpayer during the taxable year and for which the taxpayer made an election to apply section 168(k)(5) for a prior taxable year;

(E) Included in any class of property for which the taxpayer elects to apply section 168(k)(4). This paragraph (b)(2)(ii)(E) applies to property placed in service in any taxable year beginning before January 1, 2018;

(F) Described in section 168(k)(9)(A) and placed in service in any taxable year beginning after December 31, 2017; or

(G) Described in section 168(k)(9)(B) and placed in service in any taxable year beginning after December 31, 2017.

(3) *Original use or used property acquisition requirements*—(i) *In general*. Depreciable property will meet the requirements of this paragraph (b)(3) if the property meets the original use requirements in paragraph (b)(3)(ii) of this section or if the property meets the used property acquisition requirements in paragraph (b)(3)(iii) of this section.

(ii) *Original use*—(A) *In general*. Depreciable property will meet the requirements of this paragraph (b)(3)(ii) if the original use of the property commences with the taxpayer. Except as provided in paragraphs (b)(3)(ii)(B) and (C) of this section, original use means the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. Additional capital expenditures incurred by a taxpayer to recondition or rebuild property acquired or owned by the taxpayer satisfy the original use requirement. However, the cost of reconditioned or rebuilt property does not satisfy the original use requirement (but may satisfy the used property acquisition requirements in paragraph (b)(3)(iii) of this section). The question of whether property is reconditioned or rebuilt property is a question of fact. For purposes of this paragraph (b)(3)(ii)(A), property that contains used parts will not be treated as reconditioned or rebuilt if the cost of the used parts is not more than 20 percent of the total cost of the property, whether acquired or self-constructed.

(B) *Conversion to business or income-producing use*—(*1*) *Personal use to business or income-producing use.* If a taxpayer initially acquires new property for personal use and subsequently uses the property in the taxpayer's trade or business or for the taxpayer's production of income, the taxpayer is considered the original user of the property. If a person initially acquires new property for personal use and a taxpayer subsequently acquires the property from the person for use in the taxpayer's trade or business or for the taxpayer's production of income, the taxpayer is not considered the original user of the property.

(*2*) *Inventory to business or income-producing use.* If a taxpayer initially acquires new property and holds the property primarily for sale to customers in the ordinary course of the taxpayer's business and subsequently withdraws the property from inventory and uses the property primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income, the taxpayer is considered the original user of the property. If a person initially acquires new property and holds the property primarily for sale to customers in the ordinary course of the person's business and a taxpayer subsequently acquires the property from the person for use primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income, the taxpayer is considered the original user of the property. For purposes of this paragraph (b)(3)(ii)(B)(*2*), the original use of the property by the taxpayer commences on the date on which the taxpayer uses the property primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income.

(C) *Fractional interests in property.* If, in the ordinary course of its business, a taxpayer sells fractional interests in new property to third parties unrelated to the taxpayer, each first fractional owner of the property is considered as the original user of its proportionate share of the property.

Furthermore, if the taxpayer uses the property before all of the fractional interests of the property are sold but the property continues to be held primarily for sale by the taxpayer, the original use of any fractional interest sold to a third party unrelated to the taxpayer subsequent to the taxpayer's use of the property begins with the first purchaser of that fractional interest. For purposes of this paragraph (b)(3)(ii)(C), persons are not related if they do not have a relationship described in section 267(b) or 707(b) and the regulations under section 267(b) or 707(b).

(iii) *Used property acquisition requirements*—(A) *In general*. Depreciable property will meet the requirements of this paragraph (b)(3)(iii) if the acquisition of the used property meets the following requirements:

(*1*) Such property was not used by the taxpayer or a predecessor at any time prior to such acquisition;

(*2*) The acquisition of such property meets the requirements of section 179(d)(2)(A), (B), and (C), and § 1.179–4(c)(1)(ii), (iii), and (iv), or 1.179–4(c)(2) (property is acquired by purchase); and

(*3*) The acquisition of such property meets the requirements of section 179(d)(3) and § 1.179–4(d) (cost of property) (for further guidance regarding like-kind exchanges and involuntary conversions, see paragraph (f)(5) of this section).

(B) *Property was not used by the taxpayer at any time prior to acquisition*—(*1*) *In general*. Solely for purposes of paragraph (b)(3)(iii)(A)(*1*) of this section, the property is treated as used by the taxpayer or a predecessor at any time prior to acquisition by the taxpayer or predecessor if the taxpayer or the predecessor had a depreciable interest in the property at any time prior to such acquisition, whether or not the taxpayer or the predecessor claimed depreciation deductions for the property. If a lessee has a depreciable interest in the improvements made to leased property and subsequently the lessee acquires the leased property of which the improvements are a part, the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the acquired property that is eligible for the additional first year depreciation deduction, assuming all other requirements are met, must not include the unadjusted depreciable basis attributable to the improvements.

(*2*) *Taxpayer has a depreciable interest in a portion of the property*. If a taxpayer initially acquires a depreciable interest in a portion of the property and subsequently acquires a depreciable interest in an additional portion of the same property, such additional depreciable interest is not treated as used by the taxpayer at any time prior to its acquisition by the taxpayer. This paragraph (b)(3)(iii)(B)(*2*) does not apply if the taxpayer or a predecessor previously had a depreciable interest in the subsequently acquired additional portion. For purposes of this paragraph (b)(3)(iii)(B)(*2*), a portion of the property is considered to be the percentage interest in the property. If a taxpayer holds a depreciable interest in a portion of the property, sells that portion or a part of that portion, and subsequently acquires a depreciable interest in another portion of the same property, the taxpayer will be treated as previously having a depreciable interest in the property up to the amount of the portion for which the taxpayer held a depreciable interest in the property before the sale.

(*3*) *Application to members of a consolidated group*—(*i*) *Same consolidated group*. Solely for purposes of applying paragraph (b)(3)(iii)(A)(*1*) of this section, if a member of a consolidated group, as defined in § 1.1502–1(h), acquires depreciable property in which the consolidated group had a depreciable interest at any time prior to the member's acquisition of the property, the member will be treated as having a depreciable interest in the property prior to the acquisition. For purposes of this paragraph (b)(3)(iii)(B)(*3*)(*i*), a consolidated group will be treated as having a depreciable interest in property during the time any current or previous member of the group had a depreciable interest in the property while a member of the group.

(*ii*) *Certain acquisitions pursuant to a series of related transactions*. Solely for purposes of applying paragraph (b)(3)(iii)(A)(*1*) of this section, if a series of related transactions includes one or more transactions in which property is acquired by a member of a consolidated group and one or more transactions in which a corporation that had a depreciable interest in the property becomes a member of the group, the member that acquires the property will be treated as having a depreciable interest in the property prior to the time of its acquisition.

(*iii*) *Time for testing membership*. Solely for purposes of applying paragraph (b)(3)(iii)(B)(*3*)(*i*) and (*ii*) of this section, if a series of related transactions includes one or more transactions in which property is acquired by a member of a consolidated group and one or more transactions in which the transferee of the property ceases to be a member of a consolidated group, whether the taxpayer is a member of a consolidated group is tested immediately after the last transaction in the series.

(C) *Special rules for a series of related transactions*. Solely for purposes of section 168(k)(2)(E)(ii) and paragraph (b)(3)(iii)(A) of this section, in the case of a series of related transactions (for example, a series of related transactions including the transfer of a partnership interest, the transfer of partnership assets, or the disposition of property and the disposition, directly or indirectly, of the transferor or transferee of the property)—

(*1*) The property is treated as directly transferred from the original transferor to the ultimate transferee; and

(*2*) The relation between the original transferor and the ultimate transferee is tested immediately after the last transaction in the series.

(iv) *Application to partnerships*—(A) *Section 704(c) remedial allocations*. Remedial allocations under section 704(c) do not satisfy the requirements of paragraph (b)(3) of this section. See § 1.704–3(d)(2).

(B) *Basis determined under section 732*. Any basis of distributed property determined under section 732 does not satisfy the requirements of paragraph (b)(3) of this section.

(C) *Section 734(b) adjustments*. Any increase in basis of depreciable property under section 734(b) does not satisfy the requirements of paragraph (b)(3) of this section.

(D) *Section 743(b) adjustments*—(*1*) *In general*. For purposes of determining whether the transfer of a partnership interest meets the requirements of paragraph (b)(3)(iii)(A) of this section, each partner is treated as having a depreciable interest in the partner's proportionate share of partnership property. Any increase in basis of depreciable property under section

743(b) satisfies the requirements of paragraph (b)(3)(iii)(A) of this section if –

(*i*) At any time prior to the transfer of the partnership interest that gave rise to such basis increase, neither the transferee partner nor a predecessor of the transferee partner had any depreciable interest in the portion of the property deemed acquired to which the section 743(b) adjustment is allocated under section 755 and the regulations under section 755; and

(*ii*) The transfer of the partnership interest that gave rise to such basis increase satisfies the requirements of paragraphs (b)(3)(iii)(A)(*2*) and (*3*) of this section.

(*2*) *Relatedness tested at partner level*. Solely for purposes of paragraph (b)(3)(iv)(D)(*1*)(*ii*) of this section, whether the parties are related or unrelated is determined by comparing the transferor and the transferee of the transferred partnership interest.

(v) *Syndication transaction.* If a lessor has a depreciable interest in the property and the lessor and any predecessor did not previously have a depreciable interest in the property, and the property is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor (or, in the case of multiple units of property subject to the same lease, within three months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and the user of the property after the last sale during the three-month period remains the same as when the property was originally placed in service by the lessor, the purchaser of the property in the last sale during the three-month period is considered the taxpayer that acquired the property for purposes of applying paragraphs (b)(3)(ii) and (iii) of this section.

(vi) *Examples*. The application of this paragraph (b)(3) is illustrated by the following examples. Unless the facts specifically indicate otherwise, assume that the parties are not related within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c), no corporation is a member of a consolidated or controlled group, and the parties do not have predecessors:

Example 1. (i) On August 1, 2018, *A* buys a new machine for $35,000 from an unrelated party for use in *A*'s trade or business. On July 1, 2020, *B* buys that machine from *A* for $20,000 for use in *B*'s trade or business. On October 1, 2020, *B* makes a $5,000 capital expenditure to recondition the machine. *B* did not have any depreciable interest in the machine before *B* acquired it on July 1, 2020.

(ii) *A*'s purchase price of $35,000 satisfies the original use requirement of paragraph (b)(3)(ii) of this section and, assuming all other requirements are met, qualifies for the additional first year depreciation deduction.

(iii) *B*'s purchase price of $20,000 does not satisfy the original use requirement of paragraph (b)(3)(ii) of this section, but it does satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Assuming all other requirements are met, the $20,000 purchase price qualifies for the additional first year depreciation deduction. Further, *B*'s $5,000 expenditure satisfies the original use requirement of paragraph (b)(3)(ii) of this section and, assuming all other requirements are met, qualifies for the additional first year depreciation deduction, regardless of whether the $5,000 is added to the basis of the machine or is capitalized as a separate asset.

Example 2. C, an automobile dealer, uses some of its automobiles as demonstrators in order to show them to prospective customers. The automobiles that are used as demonstrators by *C* are held by *C* primarily for sale to customers in the ordinary course of its business. On November 1, 2017, *D* buys from *C* an automobile that was previously used as a demonstrator by *C. D* will use the automobile solely for business purposes. The use of the automobile by *C* as a demonstrator does not constitute a "use" for purposes of the original use requirement and, therefore, *D* will be considered the original user of the automobile for purposes of paragraph (b)(3)(ii) of this section. Assuming all other requirements are met, *D*'s purchase price of the automobile qualifies for the additional first year depreciation deduction for *D,* subject to any limitation under section 280F.

Example 3. On April 1, 2015, *E* acquires a horse to be used in *E*'s thoroughbred racing business. On October 1, 2018, *F* buys the horse from *E* and will use the horse in *F*'s horse breeding business. *F* did not have any depreciable interest in the horse before *F* acquired it on October 1, 2018. The use of the horse by *E* in its racing business prevents *F* from satisfying the original use requirement of paragraph (b)(3)(ii) of this section. However, *F*'s acquisition of the horse satisfies the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Assuming all other requirements are met, *F*'s purchase price of the horse qualifies for the additional first year depreciation deduction for *F*.

Example 4. In the ordinary course of its business, *G* sells fractional interests in its aircraft to unrelated parties. *G* holds out for sale eight equal fractional interests in an aircraft. On October 1, 2017, *G* sells five of the eight fractional interests in the aircraft to *H* and *H* begins to use its proportionate share of the aircraft immediately upon purchase. On February 1, 2018, *G* sells to *I* the remaining unsold $^3/_8$ fractional interests in the aircraft. *H* is considered the original user as to its $^5/_8$ fractional interest in the aircraft and *I* is considered the original user as to its $^3/_8$ fractional interest in the aircraft. Thus, assuming all other requirements are met, *H*'s purchase price for its $^5/_8$ fractional interest in the aircraft qualifies for the additional first year depreciation deduction and *I*'s purchase price for its $^3/_8$ fractional interest in the aircraft qualifies for the additional first year depreciation deduction.

Example 5. On September 1, 2017, *J*, an equipment dealer, buys new tractors that are held by *J* primarily for sale to customers in the ordinary course of its business. On October 15, 2017, *J* withdraws the tractors from inventory and begins to use the tractors primarily for producing rental income. The holding of the tractors by *J* as inventory does not constitute a "use" for purposes of the original use requirement and, therefore, the original use of the tractors commences with *J* on October 15, 2017, for purposes of paragraph (b)(3)(ii) of this section. However, the tractors are not eligible for the 100-percent additional first year depreciation deduction because *J* acquired the tractors before September 28, 2017.

Example 6. *K* is in the trade or business of leasing equipment to others. During 2016, *K* buys a new machine (Machine #1) and then leases it to *L* for use in *L*'s trade or business. The lease between *K* and *L* for Machine #1 is a true lease for federal income tax purposes. During 2018, *L* enters into a written binding contract with *K* to buy Machine #1 at its fair market value on May 15, 2018. *L* did not have any depreciable interest in Machine #1 before *L* acquired it on May 15, 2018. As a result, *L*'s acquisition of Machine #1 satisfies the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Assuming all other requirements are met, *L*'s purchase price of Machine #1 qualifies for the additional first year depreciation deduction for *L*.

Example 7. The facts are the same as in *Example 6* of this paragraph (b)(3)(vi), except that *K* and *L* are related parties within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). As a result, *L*'s acquisition of Machine #1 does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Thus, Machine #1 is not eligible for the additional first year depreciation deduction for *L*.

Example 8. The facts are the same as in *Example 6* of this paragraph (b)(3)(vi), except *L* incurred capital expenditures of $5,000 to improve Machine #1 on September 5, 2017, and has a depreciable interest in such improvements. *L*'s purchase price of $5,000 for the improvements to Machine #1 satisfies the original use requirement of § 1.168(k)–1(b)(3)(i) and, assuming all other requirements are met, qualifies for the 50-percent additional first year depreciation deduction. Because *L* had a depreciable interest only in the improvements to Machine #1, *L*'s acquisition of Machine #1, excluding *L*'s improvements to such machine, satisfies the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Assuming all other requirements are met, *L*'s unadjusted depreciable basis of Machine #1, excluding the amount of such unadjusted depreciable basis attributable to *L*'s improvements to Machine #1, qualifies for the 100-percent additional first year depreciation deduction.

Example 9. During 2016, *M* and *N* purchased used equipment for use in their trades or businesses and each own a 50 percent interest in such equipment. Prior to this acquisition, *M* and *N* did not have any depreciable interest in the equipment. Assume this ownership arrangement is not a partnership. During 2018, *N* enters into a written binding contract with *M* to buy *M*'s interest in the equipment. Pursuant to paragraph (b)(3)(iii)(B)(*2*) of this section, *N* is not treated as using *M*'s interest in the equipment prior to *N*'s acquisition of *M*'s interest. As a result, *N*'s acquisition of *M*'s interest in the equipment satisfies the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Assuming all other requirements are met, *N*'s purchase price of *M*'s interest in the equipment qualifies for the additional first year depreciation deduction for *N*.

Example 10. The facts are the same as in *Example 9* of this paragraph (b)(3)(vi), except *N* had a 100 percent depreciable interest in the equipment prior to 2016 and *M* purchased from *N* a 50 percent interest in the equipment during 2016. As a result, *N*'s acquisition of *M*'s interest in the equipment during 2018 does not satisfy the used property acquisition requirements of paragraphs (b)(3)(iii)(A)(*1*) and (b)(3)(iii)(B)(*1*) of this section. Paragraph (b)(3)(iii)(B)(*2*) of this section does not apply because *N* initially acquired a 100 percent depreciable interest in the equipment. Accordingly, *N*'s purchase price of *M*'s interest in the equipment during 2018 does not qualify for the additional first year depreciation deduction for *N*.

Example 11. The facts are the same as in *Example 9* of this paragraph (b)(3)(vi), except during 2018, *M* also enters into a written binding contract with *N* to buy *N*'s interest in the equipment. Pursuant to paragraph (b)(3)(iii)(B)(*2*) of this section, both *M* and *N* are treated as previously having a depreciable interest in a 50-percent portion of the equipment. Accordingly, the acquisition by *M* of *N*'s 50-percent interest and the acquisition by *N* of *M*'s 50-percent interest in the equipment during 2018 do not qualify for the additional first year depreciation deduction.

Example 12. *O* and *P* form an equal partnership, *OP*, in 2018. *O* contributes cash to *OP*, and *P* contributes equipment to *OP*. *OP*'s basis in the equipment contributed by *P* is determined under section 723. Because *OP*'s basis in such equipment is determined in whole or in part by reference to *P*'s adjusted basis in such equipment, *OP*'s acquisition of such equipment does not satisfy section 179(d)(2)(C) and § 1.179–4(c)(1)(iv) and, thus, does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Accordingly, *OP*'s acquisition of such equipment is not eligible for the additional first year depreciation deduction.

Example 13. *Q*, *R*, and *S* form an equal partnership, *QRS*, in 2019. Each partner contributes $100, which *QRS* uses to purchase a retail motor fuels outlet for $300. Assume this retail motor fuels outlet is *QRS*' only property and is qualified property under section 168(k)(2)(A)(i). *QRS* makes an election not to deduct the additional first year depreciation for all qualified property placed in service during 2019. *QRS* has a section 754 election in effect. *QRS* claimed depreciation of $15 for the retail motor fuels outlet for 2019. During 2020, when the retail motor fuels outlet's fair market value is $600, *Q* sells all of his partnership interest to *T* in a fully taxable transaction for $200. *T* never previously had a depreciable interest in the retail motor fuels outlet. *T* takes an outside basis of $200 in the partnership interest previously owned by *Q*. *T*'s share of the partnership's previously taxed capital is $95. Accordingly, *T*'s section 743(b) adjustment is $105 and is allocated entirely to the retail motor fuels outlet under section 755. Assuming all other requirements are met, *T*'s section 743(b) adjustment qualifies for the additional first year depreciation deduction.

Example 14. The facts are the same as in *Example 13* of this paragraph (b)(3)(vi), except that *Q* sells his partnership interest to *U*, a related person within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). *U*'s section 743(b) adjustment does not qualify for the additional first year depreciation deduction.

Example 15. The facts are the same as in *Example 13* of this paragraph (b)(3)(vi), except that *Q* dies and his partnership interest is transferred to *V*. *V* takes a basis in *Q*'s partnership interest under section 1014. As a result, section 179(d)(2)(C)(ii) and § 1.179–4(c)(1)(iv) are not satisfied, and *V*'s section 743(b) adjustment does not qualify for the additional first year depreciation deduction.

Example 16. The facts are the same as in *Example 13* of this paragraph (b)(3)(vi), except that *QRS* purchased the retail motor fuels outlet from *T* prior to *T* purchasing *Q*'s partnership interest in *QRS*. *T* had a depreciable interest in such retail motor fuels outlet. Because *T* had a depreciable interest in the retail motor fuels outlet before *T* acquired its interest in *QRS*, *T*'s section 743(b) adjustment does not qualify for the additional first year depreciation deduction.

Example 17. In November 2017, AA Corporation purchases a used drill press costing $10,000 and is granted a trade-in allowance of $2,000 on its old drill press. The used drill press is qualified property under section 168(k)(2)(A)(i). The old drill press had a basis of $1,200. Under sections 1012 and 1031(d), the basis of the used drill press is $9,200 ($1,200 basis of old drill press plus cash expended of $8,000). Only $8,000 of the basis of the used drill press satisfies the requirements of section 179(d)(3) and § 1.179–4(d) and, thus, satisfies the used property acquisition requirement of paragraph (b)(3)(iii) of this section. The remaining $1,200 of the basis of the used drill press does not satisfy the requirements of section 179(d)(3) and § 1.179–4(d) because it is determined by reference to the old drill press. Accordingly, assuming all other requirements are met, only $8,000 of the basis of the used drill press is eligible for the additional first year depreciation deduction.

Example 18. In a series of related transactions, a father sells a machine to an unrelated party who sells the machine to the father's daughter for use in the daughter's trade or business. Pursuant to paragraph (b)(3)(iii)(C) of this section, the transfers of the machine are treated as a direct transfer from the father to his daughter and the time to test whether the parties are related is immediately after the last transaction in the series. Because the father and the daughter are related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(ii), the daughter's acquisition of the machine does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Further, because the transfers of the machine are treated as a direct transfer from the father to his daughter, the unrelated party's acquisition of the machine is not eligible for the additional first year depreciation deduction.

Example 19. Parent owns all of the stock of B Corporation and C Corporation. Parent, B Corporation, and C Corporation are all members of the Parent consolidated group. C Corporation has a depreciable interest in Equipment #1. During 2018, C Corporation sells Equipment #1 to B Corporation. Prior to this acquisition, B Corporation never had a depreciable interest in Equipment #1. B Corporation's acquisition of Equipment #1 does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section for two reasons. First, B Corporation and C Corporation are related parties within the meaning of section 179(d)(2)(B) and § 1.179–4(c)(2)(iii). Second, pursuant to paragraph (b)(3)(iii)(B)(*3*)(*i*) of this section, B Corporation is treated as previously having a depreciable interest in Equipment #1 because B Corporation is a member of the Parent consolidated group and C Corporation, while a member of the Parent consolidated group, had a depreciable interest in Equipment #1. Accordingly, B Corporation's acquisition of Equipment #1 is not eligible for the additional first year depreciation deduction.

Example 20. (i) Parent owns all of the stock of D Corporation and E Corporation. Parent, D Corporation, and E Corporation are all members of the Parent consolidated group. D Corporation has a depreciable interest in Equipment #2. No other members of the Parent consolidated group ever had a depreciable interest in Equipment #2. During 2018, D Corporation sells Equipment #2 to *BA*, a person not related, within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c), to any member of the Parent consolidated group. In an unrelated transaction during 2019, E Corporation acquires Equipment #2 from *BA* or another person not related to any member of the Parent consolidated group within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c).

(ii) Pursuant to paragraph (b)(3)(iii)(B)(*3*)(*i*) of this section, E Corporation is treated as previously having a depreciable interest in Equipment #2 because E Corporation is a member of the Parent consolidated group, and D Corporation, while a member of the Parent consolidated group, had a depreciable interest in Equipment #2. As a result, E Corporation's acquisition of Equipment #2 does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Thus, E Corporation's acquisition of Equipment #2 is not eligible for the additional first year depreciation deduction. The results would be the same if D Corporation had ceased to be a member of the Parent consolidated group prior to E Corporation's acquisition of Equipment #2.

Example 21. (i) Parent owns all of the stock of F Corporation and G Corporation. Parent, F Corporation, and G Corporation are all members of the Parent consolidated group. G Corporation has a depreciable interest in Equipment #3. No other members of the Parent consolidated group ever had a depreciable interest in Equipment #3. X Corporation is the common parent of a consolidated group and is not related, within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c), to any member of the Parent consolidated group. No member of the X consolidated group ever had a depreciable interest in Equipment #3. In a series of related transactions, G Corporation sells Equipment #3 to F Corporation, and Parent sells all of the stock of F Corporation to X Corporation.

(ii) F Corporation was a member of the Parent consolidated group at the time it acquired Equipment #3 from G Corporation, another member of the group. Paragraph (b)(3)(iii)(B)(*3*)(*i*) of this section generally treats each member of a consolidated group as having a depreciable interest in property during the time any member of the group had a depreciable interest in such property while a member of the group. Nevertheless, because there is a series of related transactions that includes the acquisition of Equipment #3 and a transaction in which F Corporation, the transferee of the property, leaves the Parent consolidated group and joins the X consolidated group, the time to test whether F Corporation is a member of the Parent consolidated group for purposes of paragraph (b)(3)(iii)(B)(*3*)(*i*) of this section is met is immediately after the last transaction in the series, that is, the sale of the F Corporation stock to X Corporation. See paragraph (b)(3)(iii)(B)(*3*)(*iii*) of this section. Accordingly, because F Corporation is not a member of the Parent consolidated group after the last transaction of the series, F Corporation is not treated as previously having a depreciable interest in Equipment #3 by virtue of G Corporation's depreciable interest in Equipment #3 under paragraph (b)(3)(iii)(B)(*3*)(*i*) of this section.

(iii) After the sale of the F Corporation stock to X Corporation, F Corporation is a member of the X consolidated group. Because no member of the X consolidated group previously had a depreciable interest in Equipment #3, F Corporation is not treated as previously having a depreciable interest in Equipment #3 under paragraph (b)(3)(iii)(B)(*3*)(*i*) of this section.

(iv) Because relatedness is tested after F Corporation leaves the Parent consolidated group, F Corporation and G Corporation are not related within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). Accordingly, F Corporation's acquisition of Equipment #3 satisfies the used property acquisition requirements of paragraph (b)(3)(iii)(A)(*1*) of this section and, assuming all other requirements are met, F Corporation's acquisition of Equipment #3 is eligible for the additional first year depreciation deduction.

Example 22. (i) H Corporation, which is not a member of a consolidated group, has a depreciable interest in Equipment #4. Parent owns all the stock of I Corporation, and Parent and I Corporation are members of the Parent consolidated group. No member of the Parent consolidated group ever had a depreciable interest in Equipment #4. Neither Parent nor I Corporation is related to H Corporation within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). During 2018, H Corporation sells Equipment #4 to a person not related to H Corporation, Parent, or I Corporation within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). In a series of related transactions, during 2019, Parent acquires all of the stock of H Corporation, and I Corporation purchases Equipment #4 from an unrelated person.

(ii) In a series of related transactions, H Corporation became a member of the Parent consolidated group, and I Corporation, also a member of the Parent consolidated group, acquired Equipment #4. Because H Corporation previously had a depreciable interest in Equipment #4, pursuant to paragraph (b)(3)(iii)(B)(*3*)(*ii*) of this section, I Corporation is treated as having a depreciable interest in Equipment #4. As a result, I Corporation's acquisition of Equipment #4 does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Accordingly, I Corporation's acquisition of Equipment #4 is not eligible for the additional first year depreciation deduction.

Example 23. (i) J Corporation, K Corporation, and L Corporation are unrelated parties within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). None of J Corporation, K Corporation, and L Corporation is a member of a consolidated group. J Corporation has a depreciable interest in Equipment #5. During 2018, J Corporation sells Equipment #5 to K Corporation. During 2020, J Corporation merges into L Corporation in a transaction described in section 368(a)(1)(A). In 2021, L Corporation acquires Equipment #5 from K Corporation.

(ii) Because J Corporation is the predecessor of L Corporation and J Corporation previously had a depreciable interest in Equipment #5, L Corporation's acquisition of Equipment #5 does not satisfy paragraphs (b)(3)(iii)(A)(*1*) and (b)(3)(iii)(B)(*1*) of this section and, thus, does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Accordingly, L Corporation's acquisition of Equipment #5 is not eligible for the additional first year depreciation deduction.

Example 24. (i) M Corporation acquires and places in service a used airplane on March 26, 2018. Prior to this acquisition, M Corporation never had a depreciable interest in this airplane. On March 26, 2018, M Corporation also leases the used airplane to N Corporation, an airline company. On May 27, 2018, M Corporation sells to O Corporation the used airplane subject to the lease with N Corporation. M Corporation and O Corporation are related parties within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). As of May 27, 2018, N Corporation is still the lessee of the used airplane. Prior to this acquisition, O Corporation never had a depreciable interest in the used airplane. O Corporation is a calendar-year taxpayer.

(ii) The sale transaction of May 27, 2018, satisfies the requirements of paragraph (b)(3)(v) of this section. As a result, O Corporation is considered the taxpayer that acquired the used airplane for purposes of applying the used property acquisition requirements in paragraph (b)(3)(iii) of this section. In applying these rules, the fact that M Corporation and O Corporation are related parties is not taken into account because O Corporation, not M Corporation, is treated as acquiring the used airplane. Further, pursuant to paragraph (b)(4)(iv) of this section, the used airplane is treated as originally placed in service by O Corporation on May 27, 2018. Because O Corporation never had a depreciable interest in the used airplane and assuming all other requirements are met, O Corporation's purchase price of the used airplane qualifies for the 100-percent additional first year depreciation deduction for O Corporation.

Example 25. (i) The facts are the same as in *Example 24* of this paragraph (b)(3)(vi). Additionally, on September 5, 2018, O Corporation sells to P Corporation the used airplane subject to the lease with N Corporation. Prior to this acquisition, P Corporation never had a depreciable interest in the used airplane.

(ii) Because O Corporation, a calendar-year taxpayer, placed in service and disposed of the used airplane during 2018, the used airplane is not eligible for the additional first year depreciation deduction for O Corporation pursuant to paragraph (f)(1)(i) of this section.

(iii) Because P Corporation never had a depreciable interest in the used airplane and assuming all other requirements are met, P Corporation's purchase price of the used airplane qualifies for the 100-percent additional first year depreciation deduction for P Corporation.

(4) *Placed-in-service date*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (b)(4) if the property is placed in service by the taxpayer for use in its trade or business or for production of income after September 27, 2017; and, except as provided in paragraphs (b)(2)(i)(A) and (D) of this section, before January 1, 2027, or, in the case of property described in section 168(k)(2)(B) or (C), before January 1, 2028.

(ii) *Specified plant*. If the taxpayer has properly made an election to apply section 168(k)(5) for a specified plant, the requirements of this paragraph (b)(4) are satisfied only if the specified plant is planted before January 1, 2027, or is grafted before January 1, 2027, to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business, as defined in section 263A(e)(4).

(iii) *Qualified film, television, or live theatrical production*—(A) For purposes of this paragraph (b)(4), a qualified film or television production is treated as placed in service at the time of initial release or broadcast as defined under § 1.181–1(a)(7).

(B) For purposes of this paragraph (b)(4), a qualified live theatrical production is treated as placed in service at the time of the initial live staged performance. Solely for purposes of this paragraph, the term *initial live staged performance* means the first commercial exhibition of a production to an audience. However, the term *initial live staged performance* does not include limited exhibition, prior to commercial exhibition to general audiences, if the limited exhibition is primarily for purposes of publicity, determining the need for further production activity, or raising funds for the completion of production. For example, an initial live staged performance does not include a preview of the production if the preview is primarily to determine the need for further production activity.

(iv) *Syndication transaction.* If a lessor has a depreciable interest in the property and the lessor and any predecessor did not previously have a depreciable interest in the property, and the property is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor (or, in the case of multiple units of property subject to the same lease, within three months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and the user of the property after the last sale during this three-month period remains the same as when the property was originally placed in service by the lessor, the property is treated as originally placed in service by the purchaser of the property in the last sale during the three-month period but not earlier than the date of the last sale.

(v) *Technical termination of a partnership.* For purposes of this paragraph (b)(4), in the case of a technical termination of a partnership under section 708(b)(1)(B) occurring in a taxable year beginning before January 1, 2018, qualified property placed in service by the terminated partnership during the taxable year of termination is treated as originally placed in service by the new partnership on the date the qualified property is contributed by the terminated partnership to the new partnership.

(vi) *Section 168(i)(7) transactions.* For purposes of this paragraph (b)(4), if qualified property is transferred in a transaction described in section 168(i)(7) in the same taxable year that the qualified property is placed in service by the transferor, the transferred property is treated as originally placed in service on the date the transferor placed in service the qualified property. In the case of multiple transfers of qualified property in multiple transactions described in section 168(i)(7) in the same taxable year, the placed-in-service date of the transferred property is deemed to be the date on which the first transferor placed in service the qualified property.

(5) *Acquisition of property*—(i) *In general.* This paragraph (b)(5) provides rules for the acquisition requirements in section 13201(h) of the Act. These rules apply to all property, including self-constructed property or property described in section 168(k)(2)(B) or (C).

(ii) *Acquisition date.* Except as provided in paragraph (b)(5)(vi) of this section, depreciable property will meet the requirements of this paragraph (b)(5) if the property is acquired by the taxpayer after September 27, 2017, or is acquired by the taxpayer pursuant to a written binding contract entered into by the taxpayer after September 27, 2017. Property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income is acquired pursuant to a written binding contract. If a taxpayer acquired the property pursuant to a written binding contract and such contract states the date on which the contract was entered into and a closing date, delivery date, or other similar date, the date on which the contract was entered into is the date the taxpayer acquired the property. See paragraph (b)(5)(v) of this section for when a qualified film, television, or live theatrical production is treated as acquired for purposes of this paragraph (b)(5).

(iii) *Definition of binding contract*—(A) *In general.* A contract is binding only if it is enforceable under State law against the taxpayer or a predecessor, and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, a contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages to a specified amount. In determining whether a contract limits damages, the fact that there may be little or no damages because the contract price does not significantly differ from fair market value will not be taken into account. For example, if a taxpayer entered into an irrevocable written contract to purchase an asset for $100 and the contract did not contain a provision for liquidated damages, the contract is considered binding notwithstanding the fact that the asset had a fair market value of $99 and under local law the seller would only recover the difference in the event the purchaser failed to perform. If the contract provided for a full refund of the purchase price in lieu of any damages allowable by law in the event of breach or cancellation, the contract is not considered binding.

(B) *Conditions.* A contract is binding even if subject to a condition, as long as the condition is not within the control of either party or a predecessor. A contract will continue to be binding if the parties make insubstantial changes in its terms and conditions or if any term is to be determined by a standard beyond the control of either party. A contract that imposes significant obligations on the taxpayer or a predecessor will be treated as binding notwithstanding the fact that certain terms remain to be negotiated by the parties to the contract.

(C) *Options.* An option to either acquire or sell property is not a binding contract.

(D) *Letter of intent.* A letter of intent for an acquisition is not a binding contract.

(E) *Supply agreements.* A binding contract does not include a supply or similar agreement if the amount and design specifications of the property to be purchased have not been specified. The contract will not be a binding contract for the property to be purchased until both the amount and the design specifications are specified. For example, if the provisions of a supply or similar agreement state the design specifications of the property to be purchased, a purchase order under the agreement for a specific number of assets is treated as a binding contract.

(F) *Components.* A binding contract to acquire one or more components of a larger property will not be treated as a binding contract to acquire the larger property. If a binding contract to acquire the component does not satisfy the requirements of this paragraph (b)(5), the component does not qualify for the additional first year depreciation deduction.

(iv) *Self-constructed property*—(A) *In general.* If a taxpayer manufactures, constructs, or produces property for use by the taxpayer in its trade or business or for its production of income, the acquisition rules in paragraph (b)(5)(ii) of this section are treated as met for the property if the taxpayer begins manufacturing, constructing, or producing the property after September 27, 2017. This paragraph (b)(5)(iv) does not apply to property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income (for further guidance, see paragraphs (b)(5)(ii) and (iii) of this section).

(B) *When does manufacture, construction, or production begin*—(*1*) *In general.* For purposes of paragraph (b)(5)(iv)(A) of this section, manufacture, construction, or production of property begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature begins depends on the facts and circumstances. For example, if the taxpayer constructs a retail motor fuels outlet on-site for use by the taxpayer in its trade or business, construction begins when physical work of a significant nature commences at the site by the taxpayer; that is, when work begins on the excavation for footings, pouring the pads for the outlet, or the driving of foundation pilings into the ground. Preliminary work, such as clearing a site, test drilling to determine soil condition, or excavation to change the contour of the land (as distinguished from excavation for footings) does not constitute the beginning of construction. However, if the taxpayer assembles a retail motor fuels outlet on-site from modular units manufactured off-site by the taxpayer and delivered to the site where the outlet will be used, manufacturing begins when physical work of a significant nature commences at the off-site location by the taxpayer.

(*2*) *Safe harbor.* For purposes of paragraph (b)(5)(iv)(B)(*1*) of this section, a taxpayer may choose to determine when physical work of a significant nature begins in accordance with this paragraph (b)(5)(iv)(B)(*2*). Physical work of a significant nature will be considered to begin at the time the taxpayer incurs (in the case of an accrual basis taxpayer) or pays (in the case of a cash basis taxpayer) more than 10 percent of the total cost of the property (excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching). A taxpayer chooses to apply this paragraph (b)(5)(iv)(B)(*2*) by filing a federal income tax return for the placed-in-service year of the property that determines when physical work of a significant nature begins consistent with this paragraph (b)(5)(iv)(B)(*2*).

(C) *Components of self-constructed property*—(*1*) *Acquired components.* If a binding contract, as defined in paragraph (b)(5)(iii) of this section, to acquire a component does not satisfy the requirements of paragraph (b)(5)(ii) of this section, the component does not qualify for the additional first year depreciation deduction. A binding contract described in the preceding sentence to acquire one or more components of a larger self-constructed property will not preclude the larger self-constructed property from satisfying the acquisition rules in paragraph (b)(5)(iv)(A) of this section. Accordingly, the unadjusted depreciable basis of the larger self-constructed property that is eligible for the additional first year depreciation deduction, assuming all other requirements are met, must not include the unadjusted depreciable basis of any component that does not satisfy the requirements of paragraph (b)(5)(ii) of this section. If the manufacture, construction, or production of the larger self-constructed property begins before September 28, 2017, the larger self-constructed property and any acquired components related to the larger self-constructed property do not qualify for the additional first year depreciation deduction under this section.

(*2*) *Self-constructed components.* If the manufacture, construction, or production of a component by the taxpayer does not satisfy the requirements of this paragraph (b)(5)(iv), the component does not qualify for the additional first year depreciation deduction. However, if the manufacture, construction, or production of a component does not satisfy the requirements of this paragraph (b)(5)(iv), but the manufacture, construction, or production of the larger self-constructed property satisfies the requirements of this paragraph (b)(5)(iv), the larger self-constructed property qualifies for the additional first year depreciation deduction, assuming all other requirements are met, even though the component does not qualify for the additional first year depreciation deduction. Accordingly, the unadjusted depreciable basis of the larger self-constructed property that is eligible for the additional first year depreciation deduction, assuming all other requirements are met, must not include the unadjusted depreciable basis of any component that does not qualify for the additional first year depreciation deduction. If the manufacture, construction, or production of the larger self-constructed property began before September 28, 2017, the larger self-constructed property and any self-constructed components related to the larger self-constructed property do not qualify for the additional first year depreciation deduction under this section.

(v) *Qualified film, television, or live theatrical production*—(A) For purposes of section 13201(h)(1)(A) of the Act, a qualified film or television production is treated as acquired on the date principal photography commences.

(B) For purposes of section 13201(h)(1)(A) of the Act, a qualified live theatrical production is treated as acquired on the date when all of the necessary elements for producing the live theatrical production are secured. These elements may include a script, financing, actors, set, scenic and costume designs, advertising agents, music, and lighting.

(vi) *Specified plant*. If the taxpayer has properly made an election to apply section 168(k)(5) for a specified plant, the requirements of this paragraph (b)(5) are satisfied if the specified plant is planted after September 27, 2017, or is grafted after September 27, 2017, to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business, as defined in section 263A(e)(4).

(vii) *Examples.* The application of this paragraph (b)(5) is illustrated by the following examples. Unless the facts specifically indicate otherwise, assume that the parties are not related within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c), and the parties do not have predecessors:

Example 1. On September 1, 2017, *BB,* a corporation, entered into a written agreement with *CC,* a manufacturer, to purchase 20 new lamps for $100 each within the next two years. Although the agreement specifies the number of lamps to be purchased, the agreement does not specify the design of the lamps to be purchased. Accordingly, the agreement is not a binding contract pursuant to paragraph (b)(5)(iii)(E) of this section.

Example 2. The facts are the same as in *Example 1* of this paragraph (b)(5)(vii). On December 1, 2017, *BB* placed a purchase order with *CC* to purchase 20 new model XPC5 lamps for $100 each for a total amount of $2,000. Because the agreement specifies the number of lamps to be purchased and the purchase order specifies the design of the lamps to be purchased, the purchase order placed by *BB* with *CC* on December 1, 2017, is a binding contract pursuant to paragraph (b)(5)(iii)(E) of this section. Accordingly, assuming all other requirements are met, the cost of the 20 lamps qualifies for the 100-percent additional first year depreciation deduction.

Example 3. The facts are the same as in *Example 1* of this paragraph (b)(5)(vii), except that the written agreement between *BB* and *CC* is to purchase 100 model XPC5 lamps for $100 each within the next two years. Because this agreement specifies the amount and design of the lamps to be purchased, the agreement is a binding contract pursuant to paragraph (b)(5)(iii)(E) of this section. However, because the agreement was entered into before September 28, 2017, no lamp acquired by *BB* under this contract qualifies for the 100-percent additional first year depreciation deduction.

Example 4. On September 1, 2017, *DD* began constructing a retail motor fuels outlet for its own use. On November 1, 2018, *DD* ceases construction of the retail motor fuels outlet prior to its completion. Between September 1, 2017, and November 1, 2018, *DD* incurred $3,000,000 of expenditures for the construction of the retail motor fuels outlet. On May 1, 2019, *DD* resumed construction of the retail motor fuels outlet and completed its construction on August 31, 2019. Between May 1, 2019, and August 31, 2019, *DD* incurred another $1,600,000 of expenditures to complete the construction of the retail motor fuels outlet and, on September 1, 2019, *DD* placed the retail motor fuels outlet in service. None of *DD*'s total expenditures of $4,600,000 qualify for the 100-percent additional first year depreciation deduction because, pursuant to paragraph (b)(5)(iv)(A) of this section, *DD* began constructing the retail motor fuels outlet before September 28, 2017.

Example 5. The facts are the same as in *Example 4* of this paragraph (b)(5)(vii) except that *DD* began constructing the retail motor fuels outlet for its own use on October 1, 2017, and *DD* incurred the $3,000,000 between October 1, 2017, and November 1, 2018. *DD*'s total expenditures of $4,600,000 qualify for the 100-percent additional first year depreciation deduction because, pursuant to paragraph (b)(5)(iv)(A) of this section, *DD* began constructing the retail motor fuels outlet after September 27, 2017, and *DD* placed the retail motor fuels outlet in service on September 1, 2019. Accordingly, assuming all other requirements are met, the additional first year depreciation deduction for the retail motor fuels outlet will be $4,600,000, computed as $4,600,000 multiplied by 100 percent.

Example 6. On August 15, 2017, *EE* entered into a written binding contract with *FF* to manufacture an aircraft described in section 168(k)(2)(C) for use in *EE*'s trade or business. *FF* begins to manufacture the aircraft on October 1, 2017. *EE* places the aircraft in service on March 1, 2018. Pursuant to paragraph (b)(5)(ii) of this section, the aircraft is acquired by *EE* pursuant to a written binding contract. Because *EE* entered into such contract before September 28, 2017, the aircraft does not qualify for the 100-percent additional first year depreciation deduction.

Example 7. On June 1, 2017, *HH* entered into a written binding contract to acquire a new component part of property that is being constructed by *HH* for its own use in its trade or business. *HH* commenced construction of the property in November 2017, and placed the property in service in November 2018. Because *HH* entered into a written binding contract to acquire a component part prior to September 28, 2017, pursuant to paragraphs (b)(5)(ii) and (b)(5)(iv)(C)(*1*) of this section, the component part does not qualify for the 100-percent additional first year depreciation deduction. However, pursuant to paragraphs (b)(5)(iv)(A) and (b)(5)(iv)(C)(*1*) of this section, the property constructed by *HH* will qualify for the 100-percent additional first year depreciation deduction, because construction of the property began after September 27, 2017, assuming all other requirements are met. Accordingly, the unadjusted depreciable basis of the property that is eligible for the 100-percent additional first year depreciation deduction must not include the unadjusted depreciable basis of the component part.

Example 8. The facts are the same as in *Example 7* of this paragraph (b)(5)(vii) except that *HH* entered into the written binding contract to acquire the new component part on September 30, 2017, and *HH* commenced construction of the property on August 1, 2017. Pursuant to paragraphs (b)(5)(iv)(A) and (C) of this section, neither the property constructed by *HH* nor the component part will qualify for the 100-percent additional first year depreciation deduction, because *HH* began construction of the property prior to September 28, 2017.

Example 9. On September 1, 2017, *II* acquired and placed in service equipment. On October 15, 2017, *II* sells the equipment to *JJ* and leases the property back from *JJ* in a sale-leaseback transaction. Pursuant to paragraph (b)(5)(ii) of this section, *II*'s cost of the equipment does not qualify for the 100-percent additional first year depreciation deduction because *II* acquired the equipment prior to September 28, 2017. However, *JJ* acquired used equipment from an unrelated party after September 27, 2017, and, assuming all other requirements are met, *JJ*'s cost of the used equipment does qualify for the 100-percent additional first year depreciation deduction for *JJ*.

Example 10. On July 1, 2017, *KK* began constructing property for its own use in its trade or business. *KK* placed this property in service on September 15, 2017. On October 15, 2017, *KK* sells the property to *LL* and leases the property back from *LL* in a sale-leaseback transaction. Pursuant to paragraph (b)(5)(iv) of this section, *KK*'s cost of the property does not qualify for the 100-percent additional first year depreciation deduction because construction began prior to September 28, 2017. However, *LL* acquired used property from an unrelated party after September 27, 2017, and, assuming all other requirements are met, *LL*'s cost of the used property does qualify for the 100-percent additional first year depreciation deduction for *LL*.

(c) *Property described in section 168(k)(2)(B) or (C)*—(1) *In general*. Property described in section 168(k)(2)(B) or (C) will meet the acquisition requirements of section 168(k)(2)(B)(i)(III) or (k)(2)(C)(i) if the property is acquired by the taxpayer before January 1, 2027, or acquired by the taxpayer pursuant to a written binding contract that is entered into before January 1, 2027. Property described in section 168(k)(2)(B) or (C) also must meet the acquisition requirement in section 13201(h)(1)(A) of the Act (for further guidance, see paragraph (b)(5) of this section).

(2) *Definition of binding contract*. For purposes of this paragraph (c), the rules in paragraph (b)(5)(iii) of this section for a binding contract apply.

(3) *Self-constructed property*—(i) *In general.* If a taxpayer manufactures, constructs, or produces property for use by the taxpayer in its trade or business or for its production of income, the acquisition rules in paragraph (c)(1) of this section are treated as met for the property if the taxpayer begins manufacturing, constructing, or producing the property before January 1, 2027. Property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract, as defined in paragraph (b)(5)(iii) of this section, that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income is considered to be manufactured, constructed, or produced by the taxpayer. If a taxpayer enters into a written binding contract, as defined in paragraph (b)(5)(iii) of this section, before January 1, 2027, with another person to manufacture, construct, or produce property described in section 168(k)(2)(B) or (C) and the manufacture, construction, or production of this property begins after December 31, 2026, the acquisition rule in paragraph (c)(1) of this section is met.

(ii) *When does manufacture, construction, or production begin*—(A) *In general.* For purposes of this paragraph (c)(3), manufacture, construction, or production of property begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature begins depends on the facts and circumstances. For example, if a retail motor fuels outlet is to be constructed on-site, construction begins when physical work of a significant nature commences at the site; that is, when work begins on the excavation for footings, pouring the pads for the outlet, or the driving of foundation pilings into the ground. Preliminary work, such as clearing a site, test drilling to determine soil condition, or excavation to change the contour of the land (as distinguished from excavation for footings) does not constitute the beginning of construction. However, if a retail motor fuels outlet is to be assembled on-site from modular units manufactured off-site and delivered to the site where the outlet will be used, manufacturing begins when physical work of a significant nature commences at the off-site location.

(B) *Safe harbor.* For purposes of paragraph (c)(3)(ii)(A) of this section, a taxpayer may choose to determine when physical work of a significant nature begins in accordance with this paragraph (c)(3)(ii)(B). Physical work of a significant nature will be considered to begin at the time the taxpayer incurs (in the case of an accrual basis taxpayer) or pays (in the case of a cash basis taxpayer) more than 10 percent of the total cost of the property (excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching). When property is manufactured, constructed, or produced for the taxpayer by another person, this safe harbor test must be satisfied by the taxpayer. For example, if a retail motor fuels outlet is to be constructed for an accrual basis taxpayer by another person for the total cost of $200,000 (excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching), construction is deemed to begin for purposes of this paragraph (c)(3)(ii)(B) when the taxpayer has incurred more than 10 percent (more than $20,000) of the total cost of the property. A taxpayer chooses to apply this paragraph (c)(3)(ii)(B) by filing a federal income tax return for the placed-in-service year of the property that determines when physical work of a significant nature begins consistent with this paragraph (c)(3)(ii)(B).

(iii) *Components of self-constructed property*—(A) *Acquired components.* If a binding contract, as defined in paragraph (b)(5)(iii) of this section, to acquire a component does not satisfy the requirements of paragraph (c)(1) of this section, the component does not qualify for the additional first year depreciation deduction. A binding contract described in the preceding sentence to acquire one or more components of a larger self-constructed property will not preclude the larger self-constructed property from satisfying the acquisition rules in paragraph (c)(3)(i) of this section. Accordingly, the unadjusted depreciable basis of the larger self-constructed property that is eligible for the additional first year depreciation deduction, assuming all other requirements are met, must not include the unadjusted depreciable basis of any component that does not satisfy the requirements of paragraph (c)(1) of this section. If a binding contract to acquire the component is entered into before January 1, 2027, but the manufacture, construction, or production of the larger self-constructed property does not begin before January 1, 2027, the component qualifies for the additional first year depreciation deduction, assuming all other requirements are met, but the larger self-constructed property does not.

(B) *Self-constructed components.* If the manufacture, construction, or production of a component by the taxpayer does not satisfy the requirements of paragraph (c)(3)(i) of this section, the component does not qualify for the additional first year depreciation deduction. However, if the manufacture, construction, or production of a component does not satisfy the requirements of paragraph (c)(3)(i) of this section, but the manufacture, construction, or production of the larger self-constructed property satisfies the requirements of paragraph (c)(3)(i) of this section, the larger self-constructed property qualifies for the additional first year depreciation deduction, assuming all other requirements are met, even though the component does not qualify for the additional first year depreciation deduction. Accordingly, the unadjusted depreciable basis of the larger self-constructed property that is eligible for the additional first year depreciation deduction, assuming all other requirements are met, must not include the unadjusted depreciable basis of any component that does not qualify for the additional first year depreciation deduction. If the manufacture, construction, or production of a component begins before January 1, 2027, but the manufacture, construction, or production of the larger self-constructed property does not begin before January 1, 2027, the component qualifies for the additional first year depreciation deduction, assuming all other requirements are met, but the larger self-constructed property does not.

(iv) *Examples*. The application of this paragraph (c) is illustrated by the following examples:

Example 1. On June 1, 2017, *MM* decided to construct property described in section 168(k)(2)(B) for its own use. However, one of the component parts of the property had to be manufactured by another person for *MM*. On August 15, 2017, *MM* entered into a written binding contract with *NN* to acquire this component part of the property for $100,000. The manufacture of the component part commenced on September 1, 2018, and *MM* received the completed component part on February 1, 2020. The cost of this component part is 9 percent of the total cost of the property to be constructed by *MM*. *MM* began constructing the property described in section 168(k)(2)(B) on January 15, 2020, and placed this property, including all component parts, in service on November 1, 2021. Pursuant to paragraphs (b)(5)(iv)(C)(*1*) and (c)(1) of this section, the component part of $100,000 manufactured by *NN* for *MM* is not eligible for the 100-percent additional first year depreciation deduction because the written binding contract to acquire such component part was entered into before September 28, 2017. However, pursuant to paragraph (c)(3)(i) of this section, the cost of the property described in section 168(k)(2)(B), excluding the cost of the component part of $100,000 manufactured by *NN* for *MM*, is eligible for the 100-percent additional first year depreciation deduction, assuming all other requirements are met, because construction of the property began after September 27, 2017, and before January 1, 2027, and the property described in section 168(k)(2)(B) was placed in service by *MM* before January 1, 2028.

Example 2. On June 1, 2026, *OO* decided to construct property described in section 168(k)(2)(B) for its own use. However, one of the component parts of the property had to be manufactured by another person for *OO*. On August 15, 2026, *OO* entered into a written binding contract with *PP* to acquire this component part of the property for $100,000. The manufacture of the component part commenced on September 1, 2026, and *OO* received the completed component part on February 1, 2027. The cost of this component part is 9 percent of the total cost of the property to be constructed by *OO*. *OO* began constructing the property described in section 168(k)(2)(B) on January 15, 2027, and placed this property, including all component parts, in service on November 1, 2027. Pursuant to paragraph (c)(3)(iii)(B) of this section, the self-constructed component part of $100,000 manufactured by *PP* for *OO* is eligible for the additional first year depreciation deduction, assuming all other requirements are met, because the manufacturing of the component part began before January 1, 2027, and the property described in section 168(k)(2)(B), the larger self-constructed property, was placed in service by *OO* before January 1, 2028. However, pursuant to paragraph (c)(3)(i) of this section, the cost of the property described in section 168(k)(2)(B), excluding the cost of the self-constructed component part of $100,000 manufactured by *PP* for *OO*, is not eligible for the additional first year depreciation deduction because construction of the property began after December 31, 2026.

Example 3. On December 1, 2026, *QQ* entered into a written binding contract, as defined in paragraph (b)(5)(iii) of this section, with *RR* to manufacture an aircraft described in section 168(k)(2)(C) for use in *QQ*'s trade or business. *RR* begins to manufacture the aircraft on February 1, 2027. *QQ* places the aircraft in service on August 1, 2027. Pursuant to paragraph (c)(3)(i) of this section, the aircraft meets the requirements of paragraph (c)(1) of this section because the aircraft was acquired by *QQ* pursuant to a written binding contract entered into before January 1, 2027. Further, the aircraft was placed in service by *QQ* before January 1, 2028. Thus, assuming all other requirements are met, *QQ*'s cost of the aircraft is eligible for the additional first year depreciation deduction.

(d) *Computation of depreciation deduction for qualified property*—(1) *Additional first year depreciation deduction*—(i) *Allowable taxable year*. The additional first year depreciation deduction is allowable—

(A) Except as provided in paragraph (d)(1)(i)(B) or (f) of this section, in the taxable year in which the qualified property is placed in service by the taxpayer for use in its trade or business or for the production of income; or

(B) In the taxable year in which the specified plant is planted, or grafted to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business, as defined in section 263A(e)(4), if the taxpayer properly made the election to apply section 168(k)(5) (for further guidance, see paragraph (e) of this section).

(ii) *Computation*. Except as provided in paragraph (f)(5) of this section, the allowable additional first year depreciation deduction for qualified property is determined by multiplying the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the qualified property by the applicable percentage. Except as provided in paragraph (f)(1) of this section, the additional first year depreciation deduction is not affected by a taxable year of less than 12 months. See paragraph (f)(1) of this section for qualified property placed in service or planted or grafted, as applicable, and disposed of during the same taxable year. See paragraph (f)(5) of this section for qualified property acquired in a like-kind exchange or as a result of an involuntary conversion.

(iii) *Property described in section 168(k)(2)(B)*. For purposes of paragraph (d)(1)(ii) of this section, the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of qualified property described in section 168(k)(2)(B) is limited to the property's unadjusted depreciable basis attributable to the property's manufacture, construction, or production before January 1, 2027.

(iv) *Alternative minimum tax*—(A) *In general*. The additional first year depreciation deduction is allowable for alternative minimum tax purposes—

(*1*) Except as provided in paragraph (d)(1)(iv)(A)(*2*) of this section, in the taxable year in which the qualified property is placed in service by the taxpayer; or

(*2*) In the taxable year in which a specified plant is planted by the taxpayer, or grafted by the taxpayer to a plant that was previously planted, if the taxpayer properly made the election to apply section 168(k)(5) (for further guidance, see paragraph (e) of this section).

(B) *Special rules*. In general, the additional first year depreciation deduction for alternative minimum tax purposes is based on the unadjusted depreciable basis of the property for alternative minimum tax purposes. However, see paragraph (f)(5)(iii)(E) of this section for qualified property acquired in a like-kind exchange or as a result of an involuntary conversion.

(2) *Otherwise allowable depreciation deduction*—(i) *In general*. Before determining the amount otherwise allowable as a depreciation deduction for the qualified property for the placed-in-service year and any subsequent taxable year, the taxpayer must determine the remaining adjusted depreciable basis of the qualified property. This remaining adjusted depreciable basis is equal to the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the qualified property reduced by the amount of the additional first year depreciation allowed or allowable, whichever is greater. The remaining adjusted depreciable basis of the qualified property is then depreciated using the applicable depreciation provisions under the Internal Revenue Code for the qualified property. The remaining adjusted depreciable basis of the qualified property that is MACRS property is also the basis to which the annual depreciation rates in the optional depreciation tables apply (for further guidance, see section 8 of Rev. Proc. 87–57 (1987–2 C.B. 687) and § 601.601(d)(2)(ii)(*b*) of this chapter). The depreciation deduction allowable for the remaining adjusted depreciable basis of the qualified property is affected by a taxable year of less than 12 months.

(ii) *Alternative minimum tax*. For alternative minimum tax purposes, the depreciation deduction allowable for the remaining adjusted depreciable basis of the qualified property is based on the remaining adjusted depreciable basis for alternative minimum tax purposes. The remaining adjusted depreciable basis of the qualified property for alternative minimum tax purposes is depreciated using the same depreciation method, recovery period (or useful life in the case of computer software), and convention that apply to the qualified property for regular tax purposes.

(3) *Examples*. This paragraph (d) is illustrated by the following examples:

Example 1. On March 1, 2023, *SS*, a calendar-year taxpayer, purchased and placed in service qualified property that costs $1 million and is 5-year property under section 168(e). *SS* depreciates its 5-year property placed in service in 2023 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. For 2023, *SS* is allowed an 80-percent additional first year depreciation deduction of $800,000 (the unadjusted depreciable basis of $1 million multiplied by 0.80). Next, *SS* must reduce the unadjusted depreciable basis of $1 million by the additional first year depreciation deduction of $800,000 to determine the remaining adjusted depreciable basis of $200,000. Then, *SS*' depreciation deduction allowable in 2023 for the remaining adjusted depreciable basis of $200,000 is $40,000 (the remaining adjusted depreciable basis of $200,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

Example 2. On June 1, 2023, *TT*, a calendar-year taxpayer, purchased and placed in service qualified property that costs $1,500,000. The property qualifies for the expensing election under section 179 and is 5-year property under section 168(e). *TT* did not purchase any other section 179 property in 2023. *TT* makes the election under section 179 for the property and depreciates its 5-year property placed in service in 2023 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. Assume the maximum section 179 deduction for 2023 is $1,000,000. For 2023, *TT* is first allowed a $1,000,000 deduction under section 179. Next, *TT* must reduce the cost of $1,500,000 by the section 179 deduction of $1,000,000 to determine the unadjusted depreciable basis of $500,000. Then, for 2023, *TT* is allowed an 80-percent additional first year depreciation deduction of $400,000 (the unadjusted depreciable basis of $500,000 multiplied by 0.80). Next, *TT* must reduce the unadjusted depreciable basis of $500,000 by the additional first year depreciation deduction of $400,000 to determine the remaining adjusted depreciable basis of $100,000. Then, *TT*'s depreciation deduction allowable in 2023 for the remaining adjusted depreciable basis of $100,000 is $20,000 (the remaining adjusted depreciable basis of $100,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

(e) *Elections under section 168(k)*—(1) *Election not to deduct additional first year depreciation*—(i) *In general.* A taxpayer may make an election not to deduct the additional first year depreciation for any class of property that is qualified property placed in service during the taxable year. If this election is made, the election applies to all qualified property that is in the same class of property and placed in service in the same taxable year, and no additional first year depreciation deduction is allowable for the property placed in service during the taxable year in the class of property, except as provided in § 1.743–1(j)(4)(i)(B)(*1*).

(ii) *Definition of class of property.* For purposes of this paragraph (e)(1), the term *class of property* means:

(A) Except for the property described in paragraphs (e)(1)(ii)(B) and (D), and (e)(2) of this section, each class of property described in section 168(e) (for example, 5-year property);

(B) Water utility property as defined in section 168(e)(5) and depreciated under section 168;

(C) Computer software as defined in, and depreciated under, section 167(f)(1) and the regulations under section 167(f)(1);

(D) Qualified improvement property as defined in § 1.168(b)–1(a)(5)(i)(C) and (a)(5)(ii), and depreciated under section 168;

(E) Each separate production, as defined in § 1.181–3(b), of a qualified film or television production;

(F) Each separate production, as defined in section 181(e)(2), of a qualified live theatrical production; or

(G) A partner's basis adjustment in partnership assets under section 743(b) for each class of property described in paragraphs (e)(1)(ii)(A) through (F), and (e)(2) of this section (for further guidance, see § 1.743–1(j)(4)(i)(B)(*1*)).

(iii) *Time and manner for making election*—(A) *Time for making election*. Any election specified in paragraph (e)(1)(i) of this section must be made by the due date, including extensions, of the Federal tax return for the taxable year in which the qualified property is placed in service by the taxpayer.

(B) *Manner of making election*. Any election specified in paragraph (e)(1)(i) of this section must be made in the manner prescribed on Form 4562, "Depreciation and Amortization," and its instructions. The election is made separately by each person owning qualified property (for example, for each member of a consolidated group by the common parent of the group, by the partnership (including basis adjustments in the partnership assets under section 743(b)), or by the S corporation). If Form 4562 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

(iv) *Failure to make election*. If a taxpayer does not make the election specified in paragraph (e)(1)(i) of this section within the time and in the manner prescribed in paragraph (e)(1)(iii) of this section, the amount of depreciation allowable for that property under section 167(f)(1) or 168, as applicable, must be determined for the placed-in-service year and for all subsequent taxable years by taking into account the additional first year depreciation deduction. Thus, any election specified in paragraph (e)(1)(i) of this section shall not be made by the taxpayer in any other manner (for example, the election cannot be made through a request under section 446(e) to change the taxpayer's method of accounting).

(2) *Election to apply section 168(k)(5) for specified plants*—(i) *In general*. A taxpayer may make an election to apply section 168(k)(5) to one or more specified plants that are planted, or grafted to a plant that has already been planted, by the taxpayer in the ordinary course of the taxpayer's farming business, as defined in section 263A(e)(4). If this election is made for a specified plant, such plant is not treated as qualified property under section 168(k) and this section in its placed-in-service year.

(ii) *Time and manner for making election*—(A) *Time for making election*. Any election specified in paragraph (e)(2)(i) of this section must be made by the due date, including extensions, of the Federal tax return for the taxable year in which the taxpayer planted or grafted the specified plant to which the election applies.

(B) *Manner of making election*. Any election specified in paragraph (e)(2)(i) of this section must be made in the manner prescribed on Form 4562, "Depreciation and Amortization," and its instructions. The election is made separately by each person owning specified plants (for example, for each member of a consolidated group by the common parent of the group, by the partnership, or by the S corporation). If Form 4562 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

(iii) *Failure to make election*. If a taxpayer does not make the election specified in paragraph (e)(2)(i) of this section for a specified plant within the time and in the manner prescribed in paragraph (e)(2)(ii) of this section, the specified plant is treated as qualified property under section 168(k), assuming all requirements are met, in the taxable year in which such plant is placed in service by the taxpayer. Thus, any election specified in paragraph (e)(2)(i) of this section shall not be made by the taxpayer in any other manner (for example, the election cannot be made through a request under section 446(e) to change the taxpayer's method of accounting).

(3) *Election for qualified property placed in service during the 2017 taxable year*—(i) *In general*. A taxpayer may make an election to deduct 50 percent, instead of 100 percent, additional first

year depreciation for all qualified property acquired after September 27, 2017, by the taxpayer and placed in service by the taxpayer during its taxable year that includes September 28, 2017. If a taxpayer makes an election to apply section 168(k)(5) for its taxable year that includes September 28, 2017, the taxpayer also may make an election to deduct 50 percent, instead of 100 percent, additional first year depreciation for all specified plants that are planted, or grafted to a plant that has already been planted, after September 27, 2017, by the taxpayer in the ordinary course of the taxpayer's farming business during such taxable year.

(ii) *Time and manner for making election*—(A) *Time for making election*. Any election specified in paragraph (e)(3)(i) of this section must be made by the due date, including extensions, of the Federal tax return for the taxpayer's taxable year that includes September 28, 2017.

(B) *Manner of making election*. Any election specified in paragraph (e)(3)(i) of this section must be made in the manner prescribed on the 2017 Form 4562, "Depreciation and Amortization," and its instructions. The election is made separately by each person owning qualified property (for example, for each member of a consolidated group by the common parent of the group, by the partnership, or by the S corporation).

(iii) *Failure to make election*. If a taxpayer does not make the election specified in paragraph (e)(3)(i) of this section within the time and in the manner prescribed in paragraph (e)(3)(ii) of this section, the amount of depreciation allowable for qualified property under section 167(f)(1) or 168, as applicable, acquired and placed in service, or planted or grafted, as applicable, by the taxpayer after September 27, 2017, must be determined for the taxable year that includes September 28, 2017, and for all subsequent taxable years by taking into account the 100-percent additional first year depreciation deduction, unless the taxpayer makes the election specified in paragraph (e)(1)(i) of this section within the time and in the manner prescribed in paragraph (e)(1)(iii) of this section for the class of property in which the qualified property is included. Thus, any election specified in paragraph (e)(3)(i) of this section shall not be made by the taxpayer in any other manner (for example, the election cannot be made through a request under section 446(e) to change the taxpayer's method of accounting).

(4) *Alternative minimum tax.* If a taxpayer makes an election specified in paragraph (e)(1) of this section for a class of property or in paragraph (e)(2) of this section for a specified plant, the depreciation adjustments under section 56 and the regulations under section 56 do not apply to the property or specified plant, as applicable, to which that election applies for purposes of computing the taxpayer's alternative minimum taxable income. If a taxpayer makes an election specified in paragraph (e)(3) of this section for all qualified property, see paragraphs (d)(1)(iv) and (d)(2)(ii) of this section.

(5) *Revocation of election*–(i) *In general.* Except as provided in paragraph (e)(5)(ii) of this section, an election specified in this paragraph (e), once made, may be revoked only by filing a request for a private letter ruling and obtaining the Commissioner of Internal Revenue's written consent to revoke the election. The Commissioner may grant a request to revoke the election if the taxpayer acted reasonably and in good faith, and the revocation will not prejudice the interests of the Government. See generally § 301.9100–3 of this chapter. An election specified in this paragraph (e) may not be revoked through a request under section 446(e) to change the taxpayer's method of accounting.

(ii) *Automatic 6-month extension.* If a taxpayer made an election specified in this paragraph (e), an automatic extension of 6 months from the due date of the taxpayer's Federal tax return, excluding extensions, for the placed-in-service year or the taxable year in which the specified plant is planted or grafted, as applicable, is granted to revoke that election, provided the taxpayer timely filed the taxpayer's Federal tax return for the placed-in-service year or the taxable year in which the specified plant is planted or grafted, as applicable, and, within this 6-month extension period, the taxpayer, and all taxpayers whose tax liability would be affected by the election, file an amended Federal tax return for the placed-in-service year or the taxable year in which the specified plant is planted or grafted, as applicable, in a manner that is consistent with the revocation of the election.

(f) *Special rules*—(1) *Property placed in service and disposed of in the same taxable year*—(i) *In general.* Except as provided in paragraphs (f)(1)(ii) and (iii) of this section, the additional first year depreciation deduction is not allowed for qualified property placed in service or planted or grafted, as applicable, and disposed of during the same taxable year. Also if qualified property is placed in service and disposed of during the same taxable year and then reacquired and again placed in service in a subsequent taxable year, the additional first year depreciation deduction is not allowable for the property in the subsequent taxable year.

(ii) *Technical termination of a partnership.* In the case of a technical termination of a partnership under section 708(b)(1)(B) in a taxable year beginning before January 1, 2018, the additional first year depreciation deduction is allowable for any qualified property placed in service or planted or grafted, as applicable, by the terminated partnership during the taxable year of termination and contributed by the terminated partnership to the new partnership. The allowable additional first year depreciation deduction for the qualified property shall not be claimed by the terminated partnership but instead shall be claimed by the new partnership for the new partnership's taxable year in which the qualified property was contributed by the terminated partnership to the new partnership. However, if qualified property is both placed in service or planted or grafted, as applicable, and contributed to a new partnership in a transaction described in section 708(b)(1)(B) by the terminated partnership during the taxable year of termination, and if such property is disposed of by the new partnership in the same taxable year the new partnership received such property from the terminated partnership, then no additional first year depreciation deduction is allowable to either partnership.

(iii) *Section 168(i)(7) transactions.* If any qualified property is transferred in a transaction described in section 168(i)(7) in the same taxable year that the qualified property is placed in service or planted or grafted, as applicable, by the transferor, the additional first year depreciation deduction is allowable for the qualified property. The allowable additional first year depreciation deduction for the qualified property for the transferor's taxable year in which the property is placed in service or planted or grafted, as applicable, is allocated between the transferor and the transferee on a monthly basis. This allocation shall be made in accordance with the rules in § 1.168(d)–1(b)(7)(ii) for allocating the depreciation deduction between the transferor and the transferee. However, solely for purposes of this section, if the qualified property is transferred in a section 721(a) transaction to a partnership that has as a partner a person, other than the transferor, who previously had a depreciable interest in the qualified property, in the same taxable year that the qualified property is placed in service or planted or grafted, as applicable, by the transferor, the allowable additional first year depreciation deduction is allocated entirely to the transferor, and not to the partnership. Additionally, if qualified property is both placed in service or planted or grafted, as applicable, and transferred in a transaction described in section 168(i)(7) by the transferor during the same taxable year, and if such property is disposed of by the transferee, other than by a transaction described in section 168(i)(7), during the same taxable year the transferee received such property from the transferor, then no additional first year depreciation deduction is allowable to either party.

(iv) *Examples.* The application of this paragraph (f)(1) is illustrated by the following examples:

Example 1. UU and *VV* are equal partners in *Partnership JL,* a general partnership. *Partnership JL* is a calendar-year taxpayer. On October 1, 2017, *Partnership JL* purchased and placed in service qualified property at a cost of $30,000. On November 1, 2017, *UU* sells its entire 50 percent interest to *WW* in a transfer that terminates the partnership under section 708(b)(1)(B). As a result, terminated *Partnership JL* is deemed to have contributed the qualified property to new *Partnership JL.* Pursuant to paragraph (f)(1)(ii) of this section, new *Partnership JL,* not terminated *Partnership JL,* is eligible to claim the 100-percent additional first year depreciation deduction allowable for the qualified property for the taxable year 2017, assuming all other requirements are met.

Example 2. On January 5, 2018, *XX* purchased and placed in service qualified property for a total amount of $9,000. On August 20, 2018, *XX* transferred this qualified property to *Partnership BC* in a transaction described in section 721(a). No other partner of *Partnership BC* has ever had a depreciable interest in the qualified property. *XX* and *Partnership BC* are calendar-year taxpayers. Because the transaction between *XX* and *Partnership BC* is a transaction described in section 168(i)(7), pursuant to paragraph (f)(1)(iii) of this section, the 100-percent additional first year depreciation deduction allowable for the qualified property is allocated between *XX* and *Partnership BC* in accordance with the rules in § 1.168(d)–1(b)(7)(ii) for allocating the depreciation deduction between the transferor and the transferee. Accordingly, the 100-percent additional first year depreciation deduction allowable of $9,000 for the qualified property for 2018 is allocated between *XX* and *Partnership BC* based on the number of months that *XX* and *Partnership BC* held the qualified property in service during 2018. Thus, because the qualified property was held in service by *XX* for 7 of 12 months, which includes the month in which *XX* placed the qualified property in service but does not include the month in which the qualified property was transferred, *XX* is allocated $5,250 ($^7/_{12} \times$ $9,000 additional first year depreciation deduction). *Partnership BC* is allocated $3,750, the remaining $^5/_{12}$ of the $9,000 additional first year depreciation deduction allowable for the qualified property.

(2) *Redetermination of basis.* If the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of qualified property is redetermined (for example, due to contingent purchase price or discharge of indebtedness) before January 1, 2027, or in the case of property described in section 168(k)(2)(B) or (C), is redetermined before January 1, 2028, the additional first year depreciation deduction allowable for the qualified property is redetermined as follows:

(i) *Increase in basis.* For the taxable year in which an increase in basis of qualified property occurs, the taxpayer shall claim an additional first year depreciation deduction for qualified property by multiplying the amount of the increase in basis for this property by the applicable percentage for the taxable year in which the underlying property was placed in service by the taxpayer. For purposes of this paragraph (f)(2)(i), the additional first year depreciation deduction applies to the increase in basis only if the underlying property is qualified property. To determine the amount otherwise allowable as a depreciation deduction for the increase in basis of qualified property, the amount of the increase in basis of the qualified property must be reduced by the additional first year depreciation deduction allowed or allowable, whichever is greater, for the increase in basis and the remaining increase in basis of—

(A) Qualified property, except for computer software described in paragraph (b)(2)(i)(B) of this section, is depreciated over the recovery period of the qualified property remaining as of the beginning of the taxable year in which the increase in basis occurs, and using the same depreciation method and convention applicable to the qualified property that applies for the taxable year in which the increase in basis occurs; and

(B) Computer software, as defined in paragraph (b)(2)(i)(B) of this section, that is qualified property is depreciated ratably over the remainder of the 36-month period, the useful life under section 167(f)(1), as of the beginning of the first day of the month in which the increase in basis occurs.

(ii) *Decrease in basis.* For the taxable year in which a decrease in basis of qualified property occurs, the taxpayer shall reduce the total amount otherwise allowable as a depreciation deduction for all of the taxpayer's depreciable property by the excess additional first year depreciation deduction previously claimed for the qualified property. If, for such taxable year, the excess additional first year depreciation deduction exceeds the total amount otherwise allowable as a depreciation deduction for all of the taxpayer's depreciable property, the taxpayer shall take into account a negative depreciation deduction in computing taxable income. The excess additional first year depreciation deduction for qualified property is determined by multiplying the amount of the decrease in basis for this property by the applicable percentage for the taxable year in which the underlying property was placed in service by the taxpayer. For purposes of this paragraph (f)(2)(ii), the additional first year depreciation deduction applies to the decrease in basis only if the underlying property is qualified property. Also, if the taxpayer establishes by adequate records or other sufficient evidence that the taxpayer claimed less than the additional first year depreciation deduction allowable for the qualified property before the decrease in basis, or if the taxpayer claimed more than the additional first year depreciation deduction allowable for the qualified property before the decrease in basis, the excess additional first year depreciation deduction is determined by multiplying the amount of the decrease in basis by the additional first year depreciation deduction percentage actually claimed by the taxpayer for the qualified property before the decrease in basis. To determine the amount to reduce the total amount otherwise allowable as a depreciation deduction for all of the taxpayer's depreciable property for the excess depreciation previously claimed, other than the additional first year depreciation deduction, resulting from the decrease in basis of the qualified property, the amount of the decrease in basis of the qualified property must be adjusted by the excess additional first year depreciation deduction that reduced the total amount otherwise allowable as a depreciation deduction, as determined under this paragraph (f)(2)(ii), and the remaining decrease in basis of—

(A) Qualified property, except for computer software described in paragraph (b)(2)(i)(B) of this section, reduces the amount otherwise allowable as a depreciation deduction over the recovery period of the qualified property remaining as of the beginning of the taxable year in which the decrease in basis occurs, and using the same depreciation method and convention of the qualified property that applies in the taxable year in which the decrease in basis occurs. If, for any taxable year, the reduction to the amount otherwise allowable as a depreciation deduction, as determined under this paragraph (f)(2)(ii)(A), exceeds the total amount otherwise allowable as a depreciation deduction for all of the taxpayer's depreciable property, the taxpayer shall take into account a negative depreciation deduction in computing taxable income; and

(B) Computer software, as defined in paragraph (b)(2)(i)(B) of this section, that is qualified property reduces the amount otherwise allowable as a depreciation deduction over the remainder of the 36-month period, the useful life under section 167(f)(1), as of the beginning of the first day of the month in which the decrease in basis occurs. If, for any taxable year, the reduction to the amount otherwise allowable as a depreciation deduction, as determined under this paragraph (f)(2)(ii)(B), exceeds the total amount otherwise allowable as a depreciation deduction for all of the taxpayer's depreciable property, the taxpayer shall take into account a negative depreciation deduction in computing taxable income.

(iii) *Definitions.* Except as otherwise expressly provided by the Internal Revenue Code (for example, section 1017(a)), the regulations under the Internal Revenue Code, or other guidance published in the Internal Revenue Bulletin for purposes of this paragraph (f)(2)—

(A) An increase in basis occurs in the taxable year an amount is taken into account under section 461; and

(B) A decrease in basis occurs in the taxable year an amount would be taken into account under section 451.

(iv) *Examples.* The application of this paragraph (f)(2) is illustrated by the following examples:

Example 1. (i) On May 15, 2023, *YY,* a cash-basis taxpayer, purchased and placed in service qualified property that is 5-year property at a cost of $200,000. In addition to the $200,000, *YY* agrees to pay the seller 25 percent of the gross profits from the operation of the property in 2023. On May 15, 2024, *YY* paid to the seller an additional $10,000. *YY* depreciates the 5-year property placed in service in 2023 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention.

(ii) For 2023, *YY* is allowed an 80-percent additional first year depreciation deduction of $160,000 (the unadjusted depreciable basis of $200,000 multiplied by 0.80). In addition, *YY*'s depreciation deduction for 2023 for the remaining adjusted depreciable basis of $40,000 (the unadjusted depreciable basis of $200,000 reduced by the additional first year depreciation deduction of $160,000) is $8,000 (the remaining adjusted depreciable basis of $40,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

(iii) For 2024, *YY*'s depreciation deduction for the remaining adjusted depreciable basis of $40,000 is $12,800 (the remaining adjusted depreciable basis of $40,000 multiplied by the annual depreciation rate of 0.32 for recovery year 2). In addition, pursuant to paragraph (f)(2)(i) of this section, *YY* is allowed an additional first year depreciation deduction for 2024 for the $10,000 increase in basis of the qualified property. Consequently, *YY* is allowed an additional first year depreciation deduction of $8,000 (the increase in basis of $10,000 multiplied by 0.80, the applicable percentage for 2023). Also, *YY* is allowed a depreciation deduction for 2024 attributable to the remaining increase in basis of $2,000 (the increase in basis of $10,000 reduced by the additional first year depreciation deduction of $8,000). The depreciation deduction allowable for 2024 attributable to the remaining increase in basis of $2,000 is $889 (the remaining increase in basis of $2,000 multiplied by 0.4444, which is equal to 1/remaining recovery period of 4.5 years at January 1, 2024, multiplied by 2). Accordingly, for 2024, *YY*'s total depreciation deduction allowable for the qualified property is $21,689 ($12,800 plus $8,000 plus $889).

Example 2. (i) On May 15, 2023, *ZZ*, a calendar-year taxpayer, purchased and placed in service qualified property that is 5-year property at a cost of $400,000. To purchase the property, *ZZ* borrowed $250,000 from Bank1. On May 15, 2024, Bank1 forgives $50,000 of the indebtedness. *ZZ* makes the election provided in section 108(b)(5) to apply any portion of the reduction under section 1017 to the basis of the depreciable property of the taxpayer. *ZZ* depreciates the 5-year property placed in service in 2023 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention.

(ii) For 2023, *ZZ* is allowed an 80-percent additional first year depreciation deduction of $320,000 (the unadjusted depreciable basis of $400,000 multiplied by 0.80). In addition, *ZZ*'s depreciation deduction allowable for 2023 for the remaining adjusted depreciable basis of $80,000 (the unadjusted depreciable basis of $400,000 reduced by the additional first year depreciation deduction of $320,000) is $16,000 (the remaining adjusted depreciable basis of $80,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

(iii) For 2024, *ZZ*'s deduction for the remaining adjusted depreciable basis of $80,000 is $25,600 (the remaining adjusted depreciable basis of $80,000 multiplied by the annual depreciation rate 0.32 for recovery year 2). Although Bank1 forgave the indebtedness in 2024, the basis of the property is reduced on January 1, 2025, pursuant to sections 108(b)(5) and 1017(a) under which basis is reduced at the beginning of the taxable year following the taxable year in which the discharge of indebtedness occurs.

(iv) For 2025, *ZZ*'s deduction for the remaining adjusted depreciable basis of $80,000 is $15,360 (the remaining adjusted depreciable basis of $80,000 multiplied by the annual depreciation rate 0.192 for recovery year 3). However, pursuant to paragraph (f)(2)(ii) of this section, *ZZ* must reduce the amount otherwise allowable as a depreciation deduction for 2025 by the excess depreciation previously claimed for the $50,000 decrease in basis of the qualified property. Consequently, *ZZ* must reduce the amount of depreciation otherwise allowable for 2025 by the excess additional first year depreciation of $40,000 (the decrease in basis of $50,000 multiplied by 0.80, the applicable percentage for 2023). Also, *ZZ* must reduce the amount of depreciation otherwise allowable for 2025 by the excess depreciation attributable to the remaining decrease in basis of $10,000 (the decrease in basis of $50,000 reduced by the excess additional first year depreciation of $40,000). The reduction in the amount of depreciation otherwise allowable for 2025 for the remaining decrease in basis of $10,000 is $5,714 (the remaining decrease in basis of $10,000 multiplied by 0.5714, which is equal to (1/remaining recovery period of 3.5 years at January 1, 2025) multiplied by 2). Accordingly, assuming the qualified property is the only depreciable property owned by *ZZ*, for 2025, *ZZ* has a negative depreciation deduction for the qualified property of $30,354 ($15,360 minus $40,000 minus $5,714).

(3) *Sections 1245 and 1250 depreciation recapture.* For purposes of section 1245 and the regulations under section

1245, the additional first year depreciation deduction is an amount allowed or allowable for depreciation. Further, for purposes of section 1250(b) and the regulations under section 1250(b), the additional first year depreciation deduction is not a straight line method.

(4) *Coordination with section 169.* The additional first year depreciation deduction is allowable in the placed-in-service year of a certified pollution control facility, as defined in § 1.169–2(a), that is qualified property even if the taxpayer makes the election to amortize the certified pollution control facility under section 169 and the regulations under section 169 in the certified pollution control facility's placed-in-service year.

(5) *Like-kind exchanges and involuntary conversions*—(i) *Scope.* The rules of this paragraph (f)(5) apply to replacement MACRS property or replacement computer software that is qualified property at the time of replacement provided the time of replacement is after September 27, 2017, and before January 1, 2027; or, in the case of replacement MACRS property or replacement computer software that is qualified property described in section 168(k)(2)(B) or (C), the time of replacement is after September 27, 2017, and before January 1, 2028.

(ii) *Definitions.* For purposes of this paragraph (f)(5), the following definitions apply:

(A) *Replacement MACRS property* has the same meaning as that term is defined in § 1.168(i)–6(b)(1).

(B) *Relinquished MACRS property* has the same meaning as that term is defined in § 1.168(i)–6(b)(2).

(C) *Replacement computer software* is computer software, as defined in paragraph (b)(2)(i)(B) of this section, in the hands of the acquiring taxpayer that is acquired for other computer software in a like-kind exchange or in an involuntary conversion.

(D) *Relinquished computer software* is computer software that is transferred by the taxpayer in a like-kind exchange or in an involuntary conversion.

(E) *Time of disposition* has the same meaning as that term is defined in § 1.168(i)–6(b)(3) for relinquished MACRS property. For relinquished computer software, *time of disposition* is when the disposition of the relinquished computer software takes place under the convention determined under § 1.167(a)–14(b).

(F) Except as provided in paragraph (f)(5)(iv) of this section, the *time of replacement* has the same meaning as that term is defined in § 1.168(i)–6(b)(4) for replacement MACRS property. For replacement computer software, the *time of replacement* is, except as provided in paragraph (f)(5)(iv) of this section, the later of—

(*1*) When the replacement computer software is placed in service under the convention determined under § 1.167(a)–14(b); or

(*2*) The time of disposition of the relinquished property.

(G) *Exchanged basis* has the same meaning as that term is defined in § 1.168(i)–6(b)(7) for MACRS property, as defined in § 1.168(b)–1(a)(2). For computer software, the *exchanged basis* is determined after the amortization deductions for the year of disposition are determined under § 1.167(a)–14(b) and is the lesser of—

(*1*) The basis in the replacement computer software, as determined under section 1031(d) and the regulations under section 1031(d), or section 1033(b) and the regulations under section 1033(b); or

(*2*) The adjusted depreciable basis of the relinquished computer software.

(H) *Excess basis* has the same meaning as that term is defined in § 1.168(i)–6(b)(8) for replacement MACRS property. For replacement computer software, the *excess basis* is any excess of the basis in the replacement computer software, as determined under section 1031(d) and the regulations under section 1031(d), or section 1033(b) and the regulations under section 1033(b), over the exchanged basis as determined under paragraph (f)(5)(ii)(G) of this section.

(I) *Remaining exchanged basis* is the exchanged basis as determined under paragraph (f)(5)(ii)(G) of this section reduced by—

(*1*) The percentage of such basis attributable to the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business or for the production of income; and

(*2*) Any adjustments to basis provided by other provisions of the Code and the regulations under the Code (including section 1016(a)(2) and (3)) for periods prior to the disposition of the relinquished property.

(J) *Remaining excess basis* is the excess basis as determined under paragraph (f)(5)(ii)(H) of this section reduced by—

(*1*) The percentage of such basis attributable to the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business or for the production of income;

(*2*) Any portion of the basis the taxpayer properly elects to treat as an expense under section 179 or 179C; and

(*3*) Any adjustments to basis provided by other provisions of the Code and the regulations under the Code.

(K) *Year of disposition* has the same meaning as that term is defined in § 1.168(i)–6(b)(5).

(L) *Year of replacement* has the same meaning as that term is defined in § 1.168(i)–6(b)(6).

(M) *Like-kind exchange* has the same meaning as that term is defined in § 1.168(i)–6(b)(11).

(N) *Involuntary conversion* has the same meaning as that term is defined in § 1.168(i)–6(b)(12).

(iii) *Computation*—(A) *In general.* If the replacement MACRS property or the replacement computer software, as applicable, meets the original use requirement in paragraph (b)(3)(ii) of this section and all other requirements of section 168(k) and this section, the remaining exchanged basis for the year of replacement and the remaining excess basis, if any, for the year of replacement for the replacement MACRS property or the replacement computer software, as applicable, are eligible for the additional first year depreciation deduction. If the replacement MACRS property or the replacement computer software, as applicable, meets the used property acquisition requirements in paragraph (b)(3)(iii) of this section and all other requirements of section 168(k) and this section, only the remaining excess basis for the year of replacement for the replacement MACRS property or the replacement computer software, as applicable, is eligible for the additional first year depreciation deduction. See paragraph (b)(3)(iii)(A)(*3*) of this section. The additional first year depreciation deduction applies to the remaining exchanged basis and any remaining excess basis, as applicable, of the replacement MACRS property or the replacement computer software, as applicable, if the time of replacement is after September 27, 2017, and before January 1, 2027; or, in the case of replacement MACRS property or replacement computer software, as applicable, described in section 168(k)(2)(B) or (C), the time of replacement is after September 27, 2017, and before January 1, 2028. The additional first year depreciation deduction is computed separately for the remaining exchanged basis and any remaining excess basis, as applicable.

(B) *Year of disposition and year of replacement.* The additional first year depreciation deduction is allowable for the replacement MACRS property or replacement computer software in the year of replacement. However, the additional first year depreciation deduction is not allowable for the relinquished MACRS property or the relinquished computer software, as applicable, if the relinquished MACRS property or the relinquished computer software, as applicable, is placed in service and disposed of in a like-kind exchange or in an involuntary conversion in the same taxable year.

(C) *Property described in section 168(k)(2)(B).* For purposes of paragraph (f)(5)(iii)(A) of this section, the total of the remaining exchanged basis and the remaining excess basis, if any, of the replacement MACRS property that is qualified property described in section 168(k)(2)(B) and meets the original use requirement in paragraph (b)(3)(ii) of this section is limited to the total of the property's remaining exchanged basis and remaining excess basis, if any, attributable to the property's manufacture, construction, or production after September 27, 2017, and before January 1, 2027. For purposes of paragraph (f)(5)(iii)(A) of this section, the remaining excess basis, if any, of the replacement MACRS property that is qualified property described in section 168(k)(2)(B) and meets the used property acquisition requirements in paragraph (b)(3)(iii) of this section is limited to the property's remaining excess basis, if any, attributable to the property's manufacture, construction, or production after September 27, 2017, and before January 1, 2027.

(D) *Effect of § 1.168(i)–6(i)(1) election.* If a taxpayer properly makes the election under § 1.168(i)–6(i)(1) not to apply § 1.168(i)–6 for any MACRS property, as defined in § 1.168(b)–1(a)(2), involved in a like-kind exchange or involuntary conversion and either of the following:

(*1*) The replacement MACRS property meets the original use requirement in paragraph (b)(3)(ii) of this section and all other requirements of section 168(k) and this section, the total of the exchanged basis, as defined in § 1.168(i)–6(b)(7), and the excess basis, as defined in § 1.168(i)–6(b)(8), if any, in the replacement MACRS property is eligible for the additional first year depreciation deduction; or

(*2*) The replacement MACRS property meets the used property acquisition requirements in paragraph (b)(3)(iii) of this section and all other requirements of section 168(k) and this section, only the excess basis, as defined in § 1.168(i)–6(b)(8), if any, in the replacement MACRS property is eligible for the additional first year depreciation deduction.

(E) *Alternative minimum tax.* The additional first year depreciation deduction is allowed for alternative minimum tax purposes for the year of replacement of replacement MACRS property or replacement computer software, as applicable, that is qualified property. If the replacement MACRS property or the replacement computer software, as applicable, meets the original use requirement in paragraph (b)(3)(ii) of this section and all other requirements of section 168(k) and this section, the additional first year depreciation deduction for alternative minimum tax purposes is based on the remaining exchanged basis and the remaining excess basis, if any, of the replacement MACRS property or the replacement computer software, as applicable, for alternative minimum tax purposes. If the replacement MACRS property or the replacement computer software, as applicable, meets the used property acquisition requirements in paragraph (b)(3)(iii) of this section and all other requirements of section 168(k) and this section, the additional first year depreciation deduction for alternative minimum tax purposes is based on the remaining excess basis, if any, of the replacement MACRS property or the replacement computer software, as applicable, for alternative minimum tax purposes.

(iv) *Replacement MACRS property or replacement computer software that is acquired and placed in service before disposition of relinquished MACRS property or relinquished computer software.* If, in an involuntary conversion, a taxpayer acquires and places in service the replacement MACRS property or the replacement computer software, as applicable, before the time of disposition of the involuntarily converted MACRS property or the involuntarily converted computer software, as applicable; and the time of disposition of the involuntarily converted MACRS property or the involuntarily converted computer software, as applicable, is after December 31, 2026, or, in the case of property described in service 168(k)(2)(B) or (C), after December 31, 2027, then—

(A) The time of replacement for purposes of this paragraph (f)(5) is when the replacement MACRS property or replacement computer software, as applicable, is placed in service by the taxpayer, provided the threat or imminence of requisition or condemnation of the involuntarily converted MACRS property or involuntarily converted computer software, as applicable, existed before January 1, 2027, or, in the case of property described in section 168(k)(2)(B) or (C), existed before January 1, 2028; and

(B) The taxpayer depreciates the replacement MACRS property or replacement computer software, as applicable, in accordance with paragraph (d) of this section. However, at the time of disposition of the involuntarily converted MACRS property, the taxpayer determines the exchanged basis, as defined in § 1.168(i)–6(b)(7), and the excess basis, as defined in § 1.168(i)–6(b)(8), of the replacement MACRS property and begins to depreciate the depreciable exchanged basis, as defined in § 1.168(i)–6(b)(9), of the replacement MACRS property in accordance with § 1.168(i)–6(c). The depreciable excess basis, as defined in § 1.168(i)–6(b)(10), of the replacement MACRS property continues to be depreciated by the taxpayer in accordance with the first sentence of this paragraph (f)(5)(iv)(B). Further, in the year of disposition of the involuntarily converted MACRS property, the taxpayer must include in taxable income the excess of the depreciation deductions allowable, including the additional first year depreciation deduction allowable, on the unadjusted depreciable basis of the replacement MACRS property over the additional first year depreciation deduction that would have been allowable to the taxpayer on the remaining exchanged basis of the replacement MACRS property at the time of replacement, as defined in paragraph (f)(5)(v)(A) of this section, plus the depreciation deductions that would have been allowable, including the additional first year depreciation deduction allowable, to the taxpayer on the depreciable excess basis of the replacement MACRS property from the date the replacement MACRS property was placed in service by the taxpayer, taking into account the applicable convention, to the time of disposition of the involuntarily converted MACRS property. Similar rules apply to replacement computer software.

(v) *Examples.* The application of this paragraph (f)(5) is illustrated by the following examples:

Example 1. (i) In April 2016, *CSK*, a calendar-year corporation, acquired for $200,000 and placed in service Canopy V1, a gas station canopy. Canopy V1 is qualified property under section 168(k)(2), as in effect on the day before amendment by the Act, and is 5-year property under section 168(e). *CSK* depreciated Canopy V1 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. *CSK* elected to use the optional depreciation tables to compute the depreciation allowance for Canopy V1. In November 2017, Canopy V1 was destroyed in a fire and was no longer usable in *CSK*'s business. In December 2017, in an involuntary conversion, *CSK* acquired and placed in service Canopy W1 with all of the $160,000 of insurance proceeds *CSK* received due to the loss of Canopy V1. Canopy W1 is qualified property under section 168(k)(2) and this section, and is 5-year property under section 168(e). Canopy W1 also meets the original use requirement in paragraph (b)(3)(ii) of this section. *CSK* did not make the election under § 1.168(i)–6(i)(1).

(ii) For 2016, *CSK* is allowed a 50-percent additional first year depreciation deduction of $100,000 for Canopy V1 (the unadjusted depreciable basis of $200,000 multiplied by 0.50), and a regular MACRS depreciation deduction of $20,000 for Canopy V1 (the remaining adjusted depreciable basis of $100,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

(iii) For 2017, *CSK* is allowed a regular MACRS depreciation deduction of $16,000 for Canopy V1 (the remaining adjusted depreciable basis of $100,000 multiplied by the annual depreciation rate of 0.32 for recovery year 2 ×½ year).

(iv) Pursuant to paragraph (f)(5)(iii)(A) of this section, the additional first year depreciation deduction allowable for Canopy W1 for 2017 equals $64,000 (100 percent of Canopy W1's remaining exchanged basis at the time of replacement of $64,000 (Canopy V1's remaining adjusted depreciable basis of $100,000 minus 2016 regular MACRS depreciation deduction of $20,000 minus 2017 regular MACRS depreciation deduction of $16,000)).

Example 2. (i) The facts are the same as in *Example 1* of this paragraph (f)(5)(v), except *CSK* elected not to deduct the additional first year depreciation for 5-year property placed in service in 2016. *CSK* deducted the additional first year depreciation for 5-year property placed in service in 2017.

(ii) For 2016, *CSK* is allowed a regular MACRS depreciation deduction of $40,000 for Canopy V1 (the unadjusted depreciable basis of $200,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

(iii) For 2017, *CSK* is allowed a regular MACRS depreciation deduction of $32,000 for Canopy V1 (the unadjusted depreciable basis of $200,000 multiplied by the annual depreciation rate of 0.32 for recovery year 2 × ½ year).

(iv) Pursuant to paragraph (f)(5)(iii)(A) of this section, the additional first year depreciation deduction allowable for Canopy W1 for 2017 equals $128,000 (100 percent of Canopy W1's remaining exchanged basis at the time of replacement of $128,000 (Canopy V1's unadjusted depreciable basis of $200,000 minus 2016 regular MACRS depreciation deduction of $40,000 minus 2017 regular MACRS depreciation deduction of $32,000)).

Example 3. The facts are the same as in *Example 1* of this paragraph (f)(5)(v), except Canopy W1 meets the used property acquisition requirements in paragraph (b)(3)(iii) of this section. Because the remaining excess basis of Canopy W1 is zero, *CSK* is not allowed any additional first year depreciation for Canopy W1 pursuant to paragraph (f)(5)(iii)(A) of this section.

Example 4. (i) In December 2016, *AB*, a calendar-year corporation, acquired for $10,000 and placed in service Computer X2. Computer X2 is qualified property under section 168(k)(2), as in effect on the day before amendment by the Act, and is 5-year property under section 168(e). *AB* depreciated Computer X2 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. *AB* elected to use the optional depreciation tables to compute the depreciation allowance for Computer X2. In November 2017, *AB* acquired Computer Y2 by exchanging Computer X2 and $1,000 cash in a like-kind exchange. Computer Y2 is qualified property under section 168(k)(2) and this section, and is 5-year property under section 168(e). Computer Y2 also meets the original use requirement in paragraph (b)(3)(ii) of this section. *AB* did not make the election under § 1.168(i)–6(i)(1).

(ii) For 2016, *AB* is allowed a 50-percent additional first year depreciation deduction of $5,000 for Computer X2 (unadjusted basis of $10,000 multiplied by 0.50), and a regular MACRS depreciation deduction of $1,000 for Computer X2 (the remaining adjusted depreciable basis of $5,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

(iii) For 2017, *AB* is allowed a regular MACRS depreciation deduction of $800 for Computer X2 (the remaining adjusted depreciable basis of $5,000 multiplied by the annual depreciation rate of 0.32 for recovery year 2 × ½ year).

(iv) Pursuant to paragraph (f)(5)(iii)(A) of this section, the 100-percent additional first year depreciation deduction for Computer Y2 for 2017 is allowable for the remaining exchanged basis at the time of replacement of $3,200 (Computer X2's unadjusted depreciable basis of $10,000 minus additional first year depreciation deduction allowable of $5,000 minus the 2016 regular MACRS depreciation deduction of $1,000 minus the 2017 regular MACRS depreciation deduction of $800) and for the remaining excess basis at the time of replacement of $1,000 (cash paid for Computer Y2). Thus, the 100-percent additional first year depreciation deduction allowable for Computer Y2 totals $4,200 for 2017.

Example 5. (i) In July 2017, *BC*, a calendar-year corporation, acquired for $20,000 and placed in service Equipment X3. Equipment X3 is qualified property under section 168(k)(2), as in effect on the day before amendment by the Act, and is 5-year property under section 168(e). *BC* depreciated Equipment X3 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. *BC* elected to use the optional depreciation tables to compute the depreciation allowance for Equipment X3. In December 2017, *BC* acquired Equipment Y3 by exchanging Equipment X3 and $5,000 cash in a like-kind exchange. Equipment Y3 is qualified property under section 168(k)(2) and this section, and is 5-year property under section 168(e). Equipment Y3 also meets the used property acquisition requirements in paragraph (b)(3)(iii) of this section. *BC* did not make the election under § 1.168(i)–6(i)(1).

(ii) Pursuant to § 1.168(k)–1(f)(5)(iii)(B), no additional first year depreciation deduction is allowable for Equipment X3 and, pursuant to § 1.168(d)–1(b)(3)(ii), no regular depreciation deduction is allowable for Equipment X3, for 2017.

(iii) Pursuant to paragraph (f)(5)(iii)(A) of this section, no additional first year depreciation deduction is allowable for Equipment Y3's remaining exchanged basis at the time of replacement of $20,000 (Equipment X3's unadjusted depreciable basis of $20,000). However, pursuant to paragraph (f)(5)(iii)(A) of this section, the 100-percent additional first year depreciation deduction is allowable for Equipment Y3's remaining excess basis at the time of replacement of $5,000 (cash paid for Equipment Y3). Thus, the 100-percent additional first year depreciation deduction allowable for Equipment Y3 is $5,000 for 2017.

Example 6. (i) The facts are the same as in *Example 5* of this paragraph (f)(5)(v), except *BC* properly makes the election under § 1.168(i)–6(i)(1) not to apply § 1.168(i)–6 to Equipment X3 and Equipment Y3.

(ii) Pursuant to § 1.168(k)–1(f)(5)(iii)(B), no additional first year depreciation deduction is allowable for Equipment X3 and, pursuant to § 1.168(d)–1(b)(3)(ii), no regular depreciation deduction is allowable for Equipment X3, for 2017.

(iii) Pursuant to § 1.168(i)–6(i)(1), *BC* is treated as placing Equipment Y3 in service in December 2017 with a basis of $25,000 (the total of the exchanged basis of $20,000 and the excess basis of $5,000). However, pursuant to paragraph (f)(5)(iii)(D)(*2*) of this section, the 100-percent additional first year depreciation deduction is allowable only for Equipment Y3's excess basis at the time of replacement of $5,000 (cash paid for Equipment Y3). Thus, the 100-percent additional first year depreciation deduction allowable for Equipment Y3 is $5,000 for 2017.

(6) *Change in use*—(i) *Change in use of depreciable property.* The determination of whether the use of depreciable property changes is made in accordance with section 168(i)(5) and § 1.168(i)–4.

(ii) *Conversion to personal use.* If qualified property is converted from business or income-producing use to personal use in the same taxable year in which the property is placed in service by a taxpayer, the additional first year depreciation deduction is not allowable for the property.

(iii) *Conversion to business or income-producing use*—(A) *During the same taxable year.* If, during the same taxable year, property is acquired by a taxpayer for personal use and is converted by the taxpayer from personal use to business or income-producing use, the additional first year depreciation deduction is allowable for the property in the taxable year the property is converted to business or income-producing use, assuming all of the requirements in paragraph (b) of this section are met. See paragraph (b)(3)(ii) of this section relating to the original use rules for a conversion of property to business or income-producing use.

(B) *Subsequent to the acquisition year.* If property is acquired by a taxpayer for personal use and, during a subsequent taxable year, is converted by the taxpayer from personal use to business or income-producing use, the additional first year depreciation deduction is allowable for the property in the taxable year the property is converted to business or income-producing use, assuming all of the requirements in paragraph (b) of this section are met. For purposes of paragraphs (b)(4) and (5) of this section, the property must be acquired by the taxpayer for personal use after September 27, 2017, and converted by the taxpayer from personal use to business or income-producing use by January 1, 2027. See paragraph (b)(3)(ii) of this section relating to the original use rules for a conversion of property to business or income-producing use.

(iv) *Depreciable property changes use subsequent to the placed-in-service year*—(A) If the use of qualified property changes in the hands of the same taxpayer subsequent to the taxable year the qualified property is placed in service and, as a result of the change in use, the property is no longer qualified property, the additional first year depreciation deduction allowable for the qualified property is not redetermined.

(B) If depreciable property is not qualified property in the taxable year the property is placed in service by the taxpayer, the additional first year depreciation deduction is not allowable for the property even if a change in the use of the property subsequent to the taxable year the property is placed in service results in the property being qualified property in the taxable year of the change in use.

(v) *Examples.* The application of this paragraph (f)(6) is illustrated by the following examples:

Example 1. (i) On January 1, 2019, *FFF*, a calendar year corporation, purchased and placed in service several new computers at a total cost of $100,000. *FFF* used these computers within the United States for 3 months in 2019 and then moved and used the computers outside the United States for the remainder of 2019. On January 1, 2020, *FFF* permanently returns the computers to the United States for use in its business.

(ii) For 2019, the computers are considered as used predominantly outside the United States in 2019 pursuant to § 1.48–1(g)(1)(i). As a result, the computers are required to be depreciated under the alternative depreciation system of section 168(g). Pursuant to paragraph (b)(2)(ii)(B) of this section, the computers are not qualified property in 2019, the placed-in-service year. Thus, pursuant to paragraph (f)(6)(iv)(B) of this section, no additional first year depreciation deduction is allowed for these computers, regardless of the fact that the computers are permanently returned to the United States in 2020.

Example 2. (i) On February 8, 2023, *GGG,* a calendar year corporation, purchased and placed in service new equipment at a cost of $1,000,000 for use in its California plant. The equipment is 5-year property under section 168(e) and is qualified property under section 168(k). *GGG* depreciates its 5-year property placed in service in 2023 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. On June 4, 2024, due to changes in *GGG*'s business circumstances, *GGG* permanently moves the equipment to its plant in Mexico.

(ii) For 2023, *GGG* is allowed an 80-percent additional first year depreciation deduction of $800,000 (the adjusted depreciable basis of $1,000,000 multiplied by 0.80). In addition, *GGG*'s depreciation deduction allowable in 2023 for the remaining adjusted depreciable basis of $200,000 (the unadjusted depreciable basis of $1,000,000 reduced by the additional first year depreciation deduction of $800,000) is $40,000 (the remaining adjusted depreciable basis of $200,000 multiplied by the annual depreciation rate of 0.20 for recovery year 1).

(iii) For 2024, the equipment is considered as used predominantly outside the United States pursuant to § 1.48–1(g)(1)(i). As a result of this change in use, the adjusted depreciable basis of $160,000 for the equipment is required to be depreciated under the alternative depreciation system of section 168(g) beginning in 2024. However, the additional first year depreciation deduction of $800,000 allowed for the equipment in 2023 is not redetermined.

(7) *Earnings and profits.* The additional first year depreciation deduction is not allowable for purposes of computing earnings and profits.

(8) *Limitation of amount of depreciation for certain passenger automobiles.* For a passenger automobile as defined in section 280F(d)(5), the limitation under section 280F(a)(1)(A)(i) is increased by $8,000 for qualified property acquired and placed in service by a taxpayer after September 27, 2017.

(9) *Coordination with section 47*—(i) *In general.* If qualified rehabilitation expenditures, as defined in section 47(c)(2) and § 1.48–12(c), incurred by a taxpayer with respect to a qualified rehabilitated building, as defined in section 47(c)(1) and § 1.48–12(b), are qualified property, the taxpayer may claim the rehabilitation credit provided by section 47(a), provided the requirements of section 47 are met—

(A) With respect to the portion of the basis of the qualified rehabilitated building that is attributable to the qualified rehabilitation expenditures if the taxpayer makes the applicable election under paragraph (e)(1)(i) of this section not to deduct any additional first year depreciation for the class of property that includes the qualified rehabilitation expenditures; or

(B) With respect to the portion of the remaining rehabilitated basis of the qualified rehabilitated building that is attributable to the qualified rehabilitation expenditures if the taxpayer claims the additional first year depreciation deduction on the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3) but before the reduction in basis for the amount of the rehabilitation credit, of the qualified rehabilitation expenditures; and the taxpayer depreciates the remaining adjusted depreciable basis, as defined in paragraph (d)(2)(i) of this section, of such expenditures using straight line cost recovery in accordance with section 47(c)(2)(B)(i) and § 1.48–12(c)(7)(i). For purposes of this paragraph (f)(9)(i)(B), the remaining rehabilitated basis is equal to the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3) but before the reduction in basis for the amount of the rehabilitation credit, of the qualified rehabilitation expenditures that are qualified property reduced by the additional first year depreciation allowed or allowable, whichever is greater.

(ii) *Example*. The application of this paragraph (f)(9) is illustrated by the following example:

Example. (i) Between February 8, 2023, and June 4, 2023, *JM*, a calendar-year taxpayer, incurred qualified rehabilitation expenditures of $200,000 with respect to a qualified rehabilitated building that is nonresidential real property under section 168(e). These qualified rehabilitation expenditures are qualified property and qualify for the 20-percent rehabilitation credit under section 47(a)(1). *JM*'s basis in the qualified rehabilitated building is zero before incurring the qualified rehabilitation expenditures and *JM* placed the qualified rehabilitated building in service in July 2023. *JM* depreciates its nonresidential real property placed in service in 2023 under the general depreciation system of section 168(a) by using the straight line method of depreciation, a 39-year recovery period, and the mid-month convention. *JM* elected to use the optional depreciation tables to compute the depreciation allowance for its depreciable property placed in service in 2023. Further, for 2023, *JM* did not make any election under paragraph (e) of this section.

(ii) Because *JM* did not make any election under paragraph (e) of this section, *JM* is allowed an 80-percent additional first year depreciation deduction of $160,000 for the qualified rehabilitation expenditures for 2023 (the unadjusted depreciable basis of $200,000 (before reduction in basis for the rehabilitation credit) multiplied by 0.80). *JM* also is allowed to claim a rehabilitation credit of $8,000 for the remaining rehabilitated basis of $40,000 (the unadjusted depreciable basis (before reduction in basis for the rehabilitation credit) of $200,000 less the additional first year depreciation deduction of $160,000, multiplied by 0.20 to calculate the rehabilitation credit). For 2023, the ratable share of the rehabilitation credit of $8,000 is $1,600. Further, *JM*'s depreciation deduction for 2023 for the remaining adjusted depreciable basis of $32,000 (the unadjusted depreciable basis (before reduction in basis for the rehabilitation credit) of $200,000 less the additional first year depreciation deduction of $160,000 less the rehabilitation credit of $8,000) is $376.64 (the remaining adjusted depreciable basis of $32,000 multiplied by the depreciation rate of 0.01177 for recovery year 1, placed in service in month 7).

(10) *Coordination with section 514(a)(3).* The additional first year depreciation deduction is not allowable for purposes of section 514(a)(3).

(g) *Applicability dates*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, the rules of this section apply to—

(i) Qualified property under section 168(k)(2) that is placed in service by the taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**; and

(ii) A specified plant for which the taxpayer properly made an election to apply section 168(k)(5) and that is planted, or grafted to a plant that was previously planted, by the taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

(2) *Early application*. A taxpayer may rely on the provisions of this section in these proposed regulations for—

(i) Qualified property under section 168(k)(2) acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**; and

(ii) A specified plant for which the taxpayer properly made an election to apply section 168(k)(5) and that is planted, or grafted to a plant that was previously planted, after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 10. Section 1.169–3 is amended by adding a sentence at the end of paragraph (a) and adding two sentences at the end of paragraph (g) to read as follows:

§ 1.169–3 Amortizable basis.

(a) * * * Further, before computing the amortization deduction allowable under section 169, the adjusted basis for purposes of determining gain for a facility that is acquired and placed in service after September 27, 2017, and that is qualified property under section 168(k), as amended by the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017)) (the "Act"), or § 1.168(k)–2, must be reduced by the amount of the additional first year depreciation deduction allowed or allowable, whichever is greater, under section 168(k), as amended by the Act.

* * * * *

(g) * * * The last sentence of paragraph (a) of this section applies to a certified pollution control facility that is qualified property under section 168(k)(2) and placed in service by a taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, a taxpayer may rely on the last sentence in paragraph (a) of this section in these proposed regulations for a certified pollution control facility that is qualified property under section 168(k)(2) and acquired and placed in service after September 27, 2017, by the taxpayer during taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 11. Section 1.179–4 is amended by revising paragraph (c)(2) to read as follows:

§ 1.179–4 Definitions.

* * * * *

(c) * * *

(2) Property deemed to have been acquired by a new target corporation as a result of a section 338 election (relating to certain stock purchases treated as asset acquisitions) or a section 336(e) election (relating to certain stock dispositions treated as asset transfers) will be considered acquired by purchase.

* * * * *

Par. 12. Section 1.179–6 is amended by revising the first sentence in paragraph (a) and adding paragraph (e) to read as follows:

§ 1.179–6 Effective/applicability dates.

(a) * * * Except as provided in paragraphs (b), (c), (d), and (e) of this section, the provisions of §§ 1.179–1 through 1.179–5 apply for property placed in service by the taxpayer in taxable years ending after January 25, 1993. * * *

* * * * *

(e) *Application of § 1.179–4(c)(2)*–(1) *In general*. Except as provided in paragraph (e)(2) of this section, the provisions of § 1.179–4(c)(2) relating to section 336(e) are applicable on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

(2) *Early application*. A taxpayer may rely on the provisions of § 1.179–4(c)(2) relating to section 336(e) in these proposed regulations for the taxpayer's taxable years ending on or after September 28, 2017, and ending before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 13. Section 1.312–15 is amended by adding a sentence at the end of paragraph (a)(1) and adding paragraph (e) to read as follows:

§ 1.312–15 Effect of depreciation on earnings and profits.

(a) * * *

(1) * * * Further, see § 1.168(k)–2(f)(7) with respect to the treatment of the additional first year depreciation deduction allowable under section 168(k), as amended by the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054 (December 22, 2017)), for purposes of computing the earnings and profits of a corporation.

* * * * *

(e) *Applicability date of qualified property*. The last sentence of paragraph (a) of this section applies to the taxpayer's taxable years ending on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, a taxpayer may rely on the last sentence in paragraph (a) of this section in these proposed regulations for the taxpayer's taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 14. Section 1.704–1 is amended by adding two sentences at the end of paragraph (b)(1)(ii)(*a*) and adding a sentence at the end of paragraph (b)(2)(iv)(*g*)(*3*) to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(*a*) * * * The last sentence of paragraph (b)(2)(iv)(*g*)(*3*) of this section is applicable for partnership taxable years ending on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, a partnership may rely on the last sentence in paragraph (b)(2)(iv)(*g*)(*3*) of this section in these proposed regulations for the partnership's taxable years ending on or after September 28, 2017, and ending before the partnership's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

(2) * * *

(iv) * * *

(*g*) * * *

(*3*) * * * For purposes of the preceding sentence, additional first year depreciation deduction under section 168(k) is not a reasonable method.

* * * * *

Par. 15. Section 1.704–3 is amended by:

1. Adding a sentence at the end of paragraph (d)(2);
2. Revising the first sentence in paragraph (f); and
3. Adding two sentences at the end of paragraph (f).

The additions and revision read as follows:

§ 1.704–3 Contributed property.

* * * * *

(d) * * *

(2) * * * However, the additional first year depreciation deduction under section 168(k) is not a permissible method for purposes of the preceding sentence and, if a partnership has acquired property in a taxable year for which the additional first year depreciation deduction under section 168(k) has been used of the same type as the contributed property, the portion of the contributed property's book basis that exceeds its adjusted tax basis must be recovered under a reasonable method. See § 1.168(k)–2(b)(3)(iv)(B).

* * * * *

(f) * * * With the exception of paragraphs (a)(1), (a)(8)(ii) and (iii), and (a)(10) and (11) of this section, and of the last sentence in paragraph (d)(2) of this section, this section applies to properties contributed to a partnership and to restatements pursuant to § 1.704–1(b)(2)(iv)(*f*) on or after December 21, 1993. * * * The last sentence of paragraph (d)(2) of this section applies to property contributed to a partnership on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, a taxpayer may rely on the last sentence in paragraph (d)(2) of this section in these proposed regulations for property contributed to a partnership on or after September 28, 2017, and ending before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Par. 16. Section 1.743–1 is amended by:

1. Adding three sentences to the end of paragraph (j)(4)(i)(B)(*1*) and adding two sentences at the end of paragraph (l) to read as follows:

§ 1.743–1 Optional adjustment to basis of partnership property.

* * * * *

(*j*) * * *

(4) * * *

(i) * * *

(B) * * *

(*1*) * * * Notwithstanding the above, the partnership is allowed to deduct the additional first year depreciation under section 168(k) and § 1.168(k)–2 for an increase in the basis of qualified property, as defined in section 168(k) and § 1.168(k)–2, under section 743(b) in a class of property, as defined in § 1.168(k)–2(e)(1)(ii)(A) through (F), even if the partnership made the election under section 168(k)(7) and § 1.168(k)–2(e)(1) not to deduct the additional first year depreciation for all other qualified property of the partnership in the same class of property, as defined in § 1.168(k)–2(e)(1)(ii)(A) through (F), and placed in service in the same taxable year, provided the section 743(b) basis adjustment meets all requirements of section 168(k) and § 1.168(k)–2. Further, the partnership may make an election under section 168(k)(7) and § 1.168(k)–2(e)(1) not to deduct the additional first year depreciation for an increase in the basis of qualified property, as defined in section 168(k) and § 1.168(k)–2, under section 743(b) in a class of property, as defined in § 1.168(k)–2(e)(1)(ii)(A) through (F), and placed in service in the same taxable year, even if the partnership does not make that election for all other qualified property of the partnership in the same class of property, as defined in § 1.168(k)–2(e)(1)(ii)(A) through (F), and placed in service in the same taxable year. In this case, the section 743(b) basis adjustment must be recovered under a reasonable method.

* * * * *

(l) * * * The last three sentences of paragraph (j)(4)(i)(B)(*1*) of this section apply to transfers of partnership interests that occur on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, a partnership may rely on the last three sentences in paragraph (j)(4)(i)(B)(*1*) of this section in these proposed regulations for transfers of partnership interests that occur on or after September 28, 2017, and ending before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Kirsten Wielobob
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on August 2, 2018, 4:15 p.m., and published in the issue of the Federal Register for August 8, 2018, 83 F.R. 39292)

Notice of Proposed Rulemaking Proposed Removal of Section 385 Documentation Regulations

REG–130244–17

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes removing final regulations setting forth minimum documentation requirements that ordinarily must be satisfied in order for certain related-party interests in a corporation to be treated as indebtedness for federal tax purposes (Documentation Regulations). This notice of proposed rulemaking also proposes conforming amendments to other final regulations to reflect the proposed removal of the Documentation Regulations. The final regulations to be amended and removed generally affect corporations that issue purported indebtedness to related corporations or partnerships.

DATES: Written or electronic comments and requests for a public hearing must be received by December 24, 2018.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–130244–17), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–130244–17), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–130244–17).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed removal and amendments, Austin Diamond-Jones, (202) 317-6847; concerning submissions of comments or requests for a public hearing, Regina Johnson, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35), the information collection included in these regulations under control number 1545-2267 will be discontinued upon the adoption of a final rule.

Background

Overview

Section 385 of the Internal Revenue Code (Code) authorizes the Secretary of the Treasury (Secretary) to prescribe rules to determine whether an interest in a corporation is treated for purposes of the Code as stock or indebtedness (or as in part stock and in part indebtedness) by setting forth factors to be taken into account with respect to particular factual situations.

On April 8, 2016, the Department of the Treasury (Treasury Department) and the IRS published proposed regulations (REG–108060–15) under section 385 of the Code (proposed regulations) in the **Federal Register** (81 FR 20912 (April 8, 2016)) concerning the treatment of certain interests in corporations as stock or indebtedness. A public hearing on the proposed regulations was held on July 14, 2016. The Treasury Department and the IRS also received numerous written comments in response to the proposed regulations, all of which are available at *http://www.regulations.gov*.

On October 21, 2016, the Treasury Department and the IRS published final and temporary regulations under section 385. TD 9790 (I.R.B. 2016–46, 81 FR 72858 (October 21, 2016)). The preamble to TD 9790 describes in detail the comments received on the proposed regulations and the thorough consideration given to each comment. The preamble to TD 9790 also explains the decisions reached by the Treasury Department and the IRS and the revisions that were made to the proposed regulations.

The final and temporary regulations under section 385 are primarily comprised of (i) the Documentation Regulations, which establish minimum documentation requirements that ordinarily must be satisfied in order for purported debt obligations among related parties to be treated as debt for federal tax purposes; and (ii) rules that treat as stock certain debt that is issued by a corporation to a controlling shareholder in a distribution or in another related-party transaction that achieves an economically similar result (together, the Section 385 Regulations).

Under the proposed regulations, the Documentation Regulations would have been applicable with respect to interests issued or deemed issued on or after the date the regulations were finalized. However, when finalized, the Documentation Regulations were made applicable with respect to interests issued or deemed issued on or after January 1, 2018. See §§ 1.385–1(f), 1.385–2(d)(2)(iii), and 1.385–2(i). This delayed applicability date responded to taxpayer concerns of inadequate time to begin complying with the Documentation Regulations once they were finalized.

Executive Order 13789

Executive Order 13789, issued on April 21, 2017 (E.O. 13789), instructs the Secretary to review all significant tax regulations issued on or after January 1, 2016, and to take concrete action to alleviate the burdens of regulations that (i) impose an undue financial burden on U.S. taxpayers; (ii) add undue complexity to the federal tax laws; or (iii) exceed the statutory authority of the IRS.

E.O. 13789 further instructs the Secretary to submit to the President within 60 days a report (First Report) that identifies regulations that meet these criteria. Notice 2017–38 (2017–30 I.R.B. 147 (July 24, 2017)) included the Section 385 Regulations in a list of eight regulations identified by the Secretary in the First Report as meeting at least one of the first two criteria specified in E.O. 13789. E.O. 13789 further instructs the Secretary to submit to the President a second report (Second Report) that recommends specific actions to mitigate the burden imposed by regulations identified in the First Report.

Notice 2017–36

As previously noted, the final Documentation Regulations were originally promulgated to be applicable with respect to interests issued or deemed issued on or after January 1, 2018. However, in response to continued taxpayer concern with the application of the Documentation Regulations, and in light of contemplated further actions concerning the Section 385 Regulations in connection with the review of those regulations under E.O. 13789, the Treasury Department and the IRS determined that a further delay in the application of the Documentation Regulations would be appropriate. Accordingly, in Notice 2017–36 (2017–33 I.R.B. 208 (August 14, 2017)), the Treasury Department and the IRS announced the intent to amend the Documentation Regulations to delay the applicability of the regulations for 12 months, making the regulations applicable only to interests issued or deemed issued on or after January 1, 2019.

Comments Received in Connection with E.O. 13789

In response to Notice 2017–38 and Notice 2017–36, the Treasury Department and the IRS received approximately 40 comment letters submitted by professional and trade associations, private businesses, public interest groups, and trade unions, as well as over 68,500 comments submitted by individual taxpayers on *http://www.regulations.gov* (website comments) regarding the Section 385 Regulations. The approximately 40 comment letters reflect a wide range of opinions, advocating everything from strengthening to eliminating the Documentation Regulations. The individual taxpayer comments, however, uniformly urged that the Section 385 Regulations as a whole be retained or strengthened.

1. Supporting retaining or strengthening the Documentation Regulations

At one end of the spectrum are comment letters from various public interest groups, trade unions, and other associations that, together, represent almost 500 organizations, comment letters from private citizens, and the 68,502 website comments. These comments strongly urged that the Section 385 Regulations be retained and enforced, if not strengthened. These commenters would not be subject to the Documentation Regulations. However, they are concerned with the possibility of their withdrawal because they view the Section 385 Regulations as an important tool for maintaining the federal income tax base so that small, domestic businesses and working people and families would not be forced to bear an unfair and disproportionate portion of the cost of U.S. society and infrastructure. Further, these commenters view the Section 385 Regulations as an important step in leveling the playing field for small, domestic businesses that cannot take advantage of earnings stripping tax planning, thus allowing such domestic businesses to compete with large multinational companies based solely on their products and services, and not their ability to take advantage of tax planning. In addition, these commenters argued that allowing large multinational corporations to shift earnings offshore does not create jobs or economic growth in the United States and only serves to disadvantage domestic companies.

2. Supporting limiting or withdrawing the Documentation Regulations

All of the remaining commenters raised concerns about the complexity, cost, and burden imposed by the Documentation Regulations. Most of these commenters made various suggestions for modifications that would reduce the scope and burden of the Documentation Regulations in ways they believed would make the rules more reasonable. Few disputed the Treasury Department's authority to promulgate the Documentation Regulations, however.

Among the commenters that made suggestions for modifications to the Documentation Regulations, there was considerable consensus on the modifications being recommended. Most commenters urged that transactions done in the ordinary course of business, including trade payables, be removed from the application of the Documentation Regulations. Many also urged that "market standards" be broadly adopted as the test for determining whether the documentation requirements are satisfied.

Another common concern raised by these commenters was that the consequences of failing to satisfy the Documentation Regulations are too harsh, and commenters suggested expanding the rules to make it easier to cure or avoid noncompliance and to modify the consequences of noncompliance to make these consequences more proportionate to the concerns addressed by the Documentation Regulations. For example, commenters noted that the time for curing defects in documentation could be expanded, the rules for establishing substantial compliance or reasonable cause could be expanded, and an exception could be added to excuse transactions that pose no base-erosion concern. In addition, there were comments suggesting that the consequences of failing to satisfy the regulations could be limited to a denial of interest deductions, which would avoid the collateral effects of re-characterizing the interest as equity.

Most of these commenters also requested that the application of the Documentation Regulations be delayed so that taxpayers would have adequate time to comply with the Documentation Regulations, taking into account any potential additional modifications. Some suggested delaying applicability for an additional year or two, while others suggested delaying applicability until a date that would presumably allow the effects of any tax reform legislation to be taken into account. But many urged that applicability simply be delayed until the Treasury Department and IRS have completed their review, to avoid the expense of putting systems in place that would not satisfy the Documentation Regulations that are ultimately applicable.

There were also various other modifications suggested. Some modifications would apply to taxpayers generally, such as excluding transactions between commonly held consolidated groups, removing the "reserved" sections, and replacing the entire rule with an anti-abuse rule. Other modifications were specific to the industry of the commenter or its constituents, such as raising the threshold amounts for certain businesses with higher gross asset levels and exempting industries that are perceived as less likely to engage in abusive transactions or more likely to engage in activities that further public policy.

While a number of commenters supported the withdrawal of the Documentation Regulations, most of those commenters were among those also offering suggestions for modifications. However, there were a few commenters that argued only for withdrawal.

Explanation of Provisions

On October 16, 2017, the Secretary published the Second Report in the **Federal Register** (82 FR 48013 (October 16, 2017)) stating that the Treasury Department and the IRS are considering revoking the Documentation Regulations and are actively considering developing and proposing streamlined regulations. After careful consideration of the comments received on the Documentation Regulations in connection with E.O. 13789, including with respect to Notice 2017–36 and Notice 2017–38, this notice of proposed rulemaking proposes the removal of the Documentation Regulations.

The Treasury Department and the IRS will continue to study the issues addressed by the Documentation Regulations. When that study is complete, the Treasury Department and the IRS may propose a modified version of the Documentation Regulations. Any such regulations would be substantially simplified and streamlined to reduce the burden on U.S. corporations and yet would still require sufficient documentation and other information for tax administration purposes. Further, they would be proposed with a prospective effective date to allow sufficient lead-time for taxpayers to design and implement systems to comply with those regulations.

Proposed Effective/ Applicability Date

The proposed removal of § 1.385–2 and conforming modifications are proposed to be applicable as of the date of publication in the **Federal Register** of a Treasury decision adopting these proposed regulations as final regulations. However, taxpayers may rely on these proposed regulations, in their entirety, until the date a Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS Web site at *http://www.irs.gov*.

Special Analyses

I. *Regulatory Planning and Review*

Executive Order 13777 directs agencies to alleviate unnecessary regulatory burdens placed on the American people by managing the costs associated with the governmental imposition of private expenditures required to comply with federal regulations. Executive Orders 13771, 13563, and 12866 direct agencies to prudently manage the cost of planned regulations by assessing costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

These proposed regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) (the "Treasury-OMB MOA") between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. These proposed regulations have been designated a "significant regulatory action" by OIRA under section 3(f) of Executive Order 12866 because they raise novel policy issues. This proposed rule, when final, is expected to be an Executive Order 13771 deregulatory action.

Pursuant to section 6(a)(3)(B) of Executive Order 12866, the following analysis discusses the anticipated economic effects of these proposed regulations. Although not required by that section, the Treasury Department and the IRS have generally provided monetized estimates in this analysis. These proposed regulations have been reviewed by the Office of Management and Budget.

A. *Affected population*

This analysis uses an expansive definition of the estimated affected population in order to minimize the risk that the analysis will not capture the effects on collateral groups.

1. *Application to C Corporations*

As discussed in TD 9790, this regulatory action affects approximately 6300 large C corporations out of 1.6 million C corporations and 5.8 million corporations of all types. This is because only C corporations that are part of expanded affiliated groups in which one or more members have sufficient assets ($100 million) or revenue ($50 million), or are publicly traded, would have been required to document the relevant transactions.

2. *Documentation of Intercompany Loans and Compliance*

While there is variation across businesses, longer-term intercompany debt would typically be documented, in some form of agreement containing terms and rights, by corporations following good business practices. However, some information that would have been required by the Documentation Regulations, such as a debt capacity analysis, may not typically be prepared in some cases. If applicable, the Documentation Regulations would not have required that a specific type of credit analysis or documentation be prepared in order to establish a related-party debtor's creditworthiness and ability to repay, but merely would have imposed a standard intended to be closer to commercial practice. To the extent that information supporting such analysis is already prepared in accordance with a company's normal business practice, removal of the Documentation Regulations would have a relatively low compliance cost savings. However, where a business has not typically prepared and maintained written debt instruments, term sheets, cash flow, or debt capacity analyses for intercompany debt, compliance cost savings related to the removal of the Documentation Regulations would have been higher. While the level of documentation required is clearly evident in third-party lending, there is little available information on the extent to which related parties document their intercompany loans. Anecdotal evidence and comments received indicate that businesses vary in the extent to which related-party indebtedness is documented.

B. *Description of the Documentation Regulations*

1. *In General*

If applicable, the Documentation Regulations would have prescribed the nature of the documentation necessary to substantiate the federal income tax treatment of related-party interests as indebtedness, including documentation of factors analogous to those found in third-party loans. This generally means that taxpayers would have had to be able to provide such things as: evidence of an unconditional and binding obligation to make interest and principal payments on certain fixed dates; that the holder of the loan has the rights of a creditor, including superior rights to shareholders in the case of dissolution; a reasonable expectation of the borrower's ability to repay the loan; and evidence of conduct consistent with a debtor-creditor relationship. The Documentation Regulations would have applied to relevant intercompany debt issued by U.S. borrowers beginning in 2019 and would have required that the taxpayer's documentation for a given tax year be prepared by the time the borrower's federal income tax return is filed.

The Documentation Regulations would have applied only to related groups of corporations in which the stock of at least one member is publicly traded or the group's financial results report assets exceeding $100 million or annual revenue exceeding $50 million. Because there is no general definition of a small business under the Code, these asset and revenue limits were designed to exceed the maximum receipts threshold used by the Small Business Administration in defining small businesses (U.S. Small Business Administration, *Table of Small Business Size Standards, 2016)*. In addition, these thresholds exclude about 99 percent of C corporation taxpayers while retaining 85 percent of economic activity as measured by total income. Approximately 1.5 million out of 1.6 million C corporation tax filers are single entities and therefore have no affiliates with which to engage in tax arbitrage. The intent was to limit the Documentation Regulations to large businesses with highly-related affiliates, which are responsible for most corporate activity. For example, large foreign-controlled domestic C corporations (FCDCs) (those having assets over $100 million or total income over $50 million) make up 3 percent of FCDCs but report 90 percent of FCDC interest deductions and 93 percent of FCDC total income. Similarly, the Documentation Regulations would have exempted most ordinary course transactions.

C. *Assessment of the Documentation Regulations' effects*

The Treasury Department and the IRS estimate that 6,300 or 0.4 percent of C corporation taxpayers would have been affected by the Documentation Regulations, mainly because 95 percent of taxpayers do not have affiliated corporations, and the regulations would have affected only transactions between affiliates.

While only a small fraction of corporate taxpayers will be affected by the removal of the Documentation Regulations, these 6,300 taxpayers tend to be the largest C corporation tax filers, claiming 65 percent of total interest deductions claimed by C corporations, 53 percent of total income claimed by C corporations, 81 percent of total income subject to tax claimed by C corporations, and 75 percent of total income tax after credits claimed by C corporations. Of these C corporations, approximately one-third are FCDCs that report about 20 percent of the affected total income and 20 percent of the affected interest deductions.

1. *Monetized Estimates*

The revenue and compliance burden effects are measured against a no-action baseline, which captures tax-related behavior in the absence of the proposed regulatory action and includes taxpayer behavior the Treasury Department and the IRS expect as a result of the enactment of P.L. 115–97 (TCJA). While this particular regulation does not implement TCJA requirements, it interacts with the TCJA. There are several provisions of the TCJA that reduced the tax advantages of Foreign Controlled Domestic Corporations (FCDCs) over domestically controlled companies (DCCs) and thus may affect the tax revenue and compliance burden consequences of the removal of the Documentation Regulations. First, for taxable years beginning after December 31, 2017, the TCJA reduced the statutory corporate tax rate from 35 percent to 21 percent, which lowers the effective tax rate for DCCs more than for FCDCs. Second, the ability of FCDCs to strip earnings out of the United States using deductions for interest expense was significantly reduced by the TCJA through amendments to section 163(j) of the Code. Specifically, the section 163(j) statutory amendments (1) eliminated the debt-equity ratio safe harbor, (2) reduced the maximum net interest deductions' share of adjusted taxable income from 50 percent to 30 percent, (3) limited all, rather than just related-party, interest deductions, and (4) eliminated the carryforward of excess limitation under pre-TCJA section 163(j). The TCJA's Base Erosion Anti-abuse Tax (BEAT) further reduces this ability. Thus, the benefits of the Documentation Regulations in reducing foreign acquisitions of U.S. assets and interest stripping were reduced by the TCJA.

The vast majority of TCJA provisions are self-executing, which means that they are binding on taxpayers and the IRS without any regulatory action and therefore their applicability and potential taxpayers' responses to such applicability are assumed in the baseline. The Treasury Department and the IRS recognize, however, that the section 163(j) amendments and the BEAT, along with other TCJA provisions, while self-executing, provide interpretive latitude for taxpayers and the IRS and that, without further implementation guidance, those provisions could prompt a variety of potential taxpayer responses. Faced with ambiguous tax provisions that are susceptible to a range of reasonable interpretations, some taxpayers will take conservative filing positions, others will take aggressive filing positions, and still others will simply forego business activity that implicates any uncertain provisions. Accordingly, the Treasury Department and the IRS have included in the baseline their best assessment of taxpayer behavior under current law and regulatory guidance; the baseline does not assume regulatory guidance that has not yet been issued. To the extent that taxpayer responses to any future legislation or rules regarding section 163(j) or the BEAT differ from this assessment, the revenue and compliance burden estimates with respect to the proposed removal of the Documentation Regulations would also be affected.

The Treasury Department and the IRS solicit comments on the revenue and compliance burden estimates with respect to the proposed removal of the Documentation Regulations.

a. *Revenue effects of proposed regulations*

The Treasury Department and the IRS previously addressed revenue effects in the original regulatory impact analysis (RIA) published in the preamble to T.D. 9790 and have received comments that address the revenue effect of the Documentation Regulations. The removal of the Documentation Regulations may slightly increase the ability of some firms to strip earnings out of the United States and so reduce their tax payments. The Treasury Department and the IRS estimate that removal of the Documentation Regulations will reduce revenue by $407 million over the period 2019–2028, using standard revenue reporting conventions (undiscounted nominal total). The net present value of the revenue loss is $302 and $243 ($2018 millions) using real discount rates of 3 and 7 percent, respectively. The annualized amounts are $35.4 and $34.5 ($2018 millions), again based on 3 percent and 7 percent real rates respectively. The revenue effects were estimated using the methodology described in the original RIA published in the preamble to T.D. 9790, although the estimate now covers 2019 to 2028 and includes factors that have changed as a result of TCJA as well as other technical adjustments.

Annualized discounted revenue effects are shown in the following table.

	Fiscal Years 2019 to 2028 (3% real discount rate)	Fiscal Years 2019 to 2028 (7% real discount rate)
Estimated change in annual tax revenue (annualized value, $2018 millions)	−$35.4	−$34.5

b. *Compliance burden effects from proposed regulations*

The Treasury Department and the IRS estimate that removal of the Documentation Regulations will reduce compliance costs by $924 million over the period 2019-2028 (undiscounted nominal total). The net present value of the compliance cost savings is $773 and $685 ($2018 millions) using real discount rates of 3 and 7 percent respectively. These amounts are $90.6 million and $97.5 million on an annualized basis, again based on 3 percent and 7 percent real rates respectively. The methodology for estimating the compliance cost savings also followed the methodology described in the original RIA published in the preamble to T.D. 9790, with analogous adjustments due to the change in the period covered, the effects of TCJA, and other technical adjustments. The Treasury Department and the IRS view the proposed action (removal of § 1.385–2) as reducing both tax revenues and compliance costs but they view the TCJA as primarily affecting the reduction in tax revenue from the action due mainly to reduced allowable interest deductions (163(j)) and to a lesser extent, taxation of certain base eroding payments to related parties (BEAT), including interest. The Treasury Department and the IRS do not expect a significant reduction in the number of relevant related party transactions, only a reduction in the dollar amounts, and therefore see a smaller effect of the TCJA on compliance cost savings than on revenue losses, relative to previous estimates.

In addition, the analysis includes a sensitivity analysis in which the compliance costs were estimated for a 90 percent interval around the central estimate. Annualized discounted ongoing and start-up changes in compliance costs ($2018 millions) are shown in the following table.

Estimated change in annual compliance costs (annualized value, $2018 millions)	Fiscal Years 2019 to 2028 (3% real discount rate)	Fiscal Years 2019 to 2028 (7% real discount rate)
Central estimate	−$90.6	−$97.5
High estimate	−$113.3	−$121.9
Low estimate	−$68.0	−$73.1

Technical note: In this rulemaking, the Treasury Department made technical adjustments relative to the 2016 rulemaking in calculating the annualized compliance cost estimates. The cost stream in this rulemaking is in 2018 dollars, reflects a two-year delay in effective date (relative to the previous estimates), and applies real discount rates of 3 and 7 percent. Technical adjustments account for part of the difference in the estimates between the rulemakings.

2. *Non-Monetized Effects*

a. *Reduced Tax Compliance*

By slightly increasing the ability of some taxpayers to strip earnings out of the United States through transactions with no meaningful economic or non-tax benefit, and so reducing their tax payments, removal of the Documentation Regulations is likely to slightly reduce the overall perceived legitimacy of the U.S. tax system, and hence reduce voluntary compliance.

b. *Efficiency and growth effects*

By changing the treatment of certain transactions and activities, removal of the Documentation Regulations potentially affects economic efficiency and growth (output). While the removal of the Documentation Regulations may have multiple and to some extent offsetting effects, on net they are likely to slightly reduce economic efficiency. For example, the removal of the Documentation Regulations will likely increase the tax advantage foreign owners have over domestic owners of U.S. assets, and consequently will increase the propensity for foreign acquisitions and ownership of U.S. assets that are motivated by tax considerations rather than economic substance. While these effects will likely be small, they likely reduce efficiency and growth. By increasing the ability to undertake tax-motivated acquisitions or ownership structures, removal of the Documentation Regulations may slightly reduce the incentive for assets to be owned or managed by those most capable of putting the assets to their highest-valued use. Moreover, removal of the Documentation Regulations may put purely domestic U.S. firms on less even tax footing than their foreign-owned competitors operating in the United States. On the other hand, removal of the Documentation Regulations may slightly reduce the effective tax rate and compliance costs on U.S. inbound investment. While the magnitude of this reduction is small, to the extent that it increases new capital investment in the United States, its effects would be efficiency and growth enhancing. Most inbound investment is via acquisition of existing U.S. companies rather than greenfield (new) investment in the United States, however, and thus such investment changes the ownership of existing assets, without necessarily adding to the stock of capital employed in the United States. On balance, the likely effect of the removal of the Documentation Regulations is to reduce the efficiency of the corporate tax system slightly.

c. *Higher Tax Administrative Costs for the IRS*

The reduced loan documentation required of large corporations as a result of the removal of the Documentation Regulations will reduce the ability of the IRS to more effectively administer the tax laws by making it harder for the IRS to evaluate whether purported debt transactions are legitimate loans. This will raise the cost of auditing and evaluating the tax returns of companies engaged in these transactions.

II. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. Chapter 6), it is hereby certified that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

As discussed earlier in this preamble, on October 21, 2016, the Treasury Department and the IRS published final and temporary regulations under section 385. The final and temporary regulations under section 385, among other things, established minimum documentation requirements that must be satisfied in order for purported debt obligations among related parties to be treated as debt for federal tax purposes. When finalized in October 2016, the Documentation Regulations were made applicable with respect to interests issued or deemed issued on or after January 1, 2018. In response to continued taxpayer concern with the application of the Documentation Regulations, the Treasury Department and the IRS, in Notice 2017–36, further delayed the applicability of the regulations by making the regulations applicable only to interests issued or deemed issued on or after January 1, 2019. This proposed rule, if finalized, would remove these Documentation Regulations that have not yet been made applicable to any interests issued by any taxpayer.

Section 1.385–2, if applicable, would have provided documentation requirements to substantiate the treatment of certain related party instruments as indebtedness. Section 1.385–2 would have applied to large corporate groups (specifically, those that are publically traded, or have assets exceeding $100 million or annual total revenue exceeding $50 million in its expanded group), thus limiting the scope of small entities affected. Section 1.385–2 would have applied to financial institutions, which are considered small entities under the Regulatory Flexibility Act if they have less than $550 million in assets (13 CFR 121). The Treasury Department and the IRS believe that § 1.385–2 would not affect a substantial number of small entities other than small financial institutions. Even if the regulations affected a substantial number of small entities in that sector, the economic impact of this rule would be minimal because the proposed regulations would remove the currently inapplicable documentation requirements in § 1.385–2. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately $150 million. This proposed rule does not include any mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

Executive Order 13132: Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the ADDRESSES heading. All comments will be available at *http://www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this notice of proposed rulemaking is Austin Diamond-Jones of the Office of the Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the sectional authority for § 1.385–2 to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Par. 2. Section 1.385–1 is amended by revising paragraph (a), the last sentence of paragraphs (c) introductory text and (c)(4)(iv), paragraph (d)(1)(i), the first sentence of paragraph (d)(1)(ii), and paragraphs (d)(1)(iii) and (d)(1)(iv)(A), and removing and reserving paragraph (d)(2)(i).

The revisions read as follows:

§ 1.385–1 General provisions.

(a) *Overview of section 385 regulations*. This section and §§ 1.385–3 through 1.385–4T (collectively, the section 385 regulations) provide rules under section 385 to determine the treatment of an interest in a corporation as stock or indebtedness (or as in part stock and in part indebtedness) in particular factual situations. Paragraph (b) of this section provides the general rule for determining the treatment of an interest based on provisions of the Internal Revenue Code and on common law, including the factors prescribed under common law. Paragraphs (c), (d), and (e) of this section provide definitions and rules of general application for purposes of the section 385 regulations. Section 1.385–3 sets forth additional factors that, when present, control the determination of whether an interest in a corporation that is held by a member of the corporation's expanded group is treated (in whole or in part) as stock or indebtedness. * * * * *

(c) * * * For additional definitions that apply for purposes of their respective sections, see §§ 1.385–3(g) and 1.385–4T(e).

* * * * *

(4) * * *

(iv) * * * For purposes of the section 385 regulations, a corporation is a member of an expanded group if it is described in this paragraph (c)(4)(iv) of this section immediately before the relevant time for determining membership (for example, immediately before the issuance of a debt instrument (as defined in § 1.385–3(g)(4)) or immediately before a distribution or acquisition that may be subject to § 1.385–3(b)(2) or (3)).

* * * * *

(d) * * *

(1) * * *

(i) *In general*. If a debt instrument (as defined in § 1.385–3(g)(4)) is deemed to be exchanged under the section 385 regulations, in whole or in part, for stock, the holder is treated for all federal tax purposes as having realized an amount equal to the holder's adjusted basis in that portion of the debt instrument as of the date of the deemed exchange (and as having basis in the stock deemed to be received equal to that amount), and, except as provided in paragraph (d)(1)(iv)(B) of this section, the issuer is treated for all federal tax purposes as having retired that portion of the debt instrument for an amount equal to its adjusted issue price as of the date of the deemed exchange. In addition, neither party accounts for any accrued but unpaid qualified stated interest on the debt instrument or any foreign exchange gain or loss with respect to that accrued but unpaid qualified stated interest (if any) as of the deemed exchange. This paragraph (d)(1)(i) does not affect the rules that otherwise apply to the debt instrument prior to the date of the deemed exchange (for example, this paragraph (d)(1)(i) does not affect the issuer's deduction of accrued but unpaid qualified stated interest otherwise deductible prior to the date of the deemed exchange). Moreover, the stock issued in the deemed exchange is not treated as a payment of accrued but unpaid original issue discount or qualified stated interest on the debt instrument for federal tax purposes.

(ii) *Section 988*. Notwithstanding the first sentence of paragraph (d)(1)(i) of this section, the rules of § 1.988–2(b)(13) apply to require the holder and the issuer of a debt instrument that is deemed to be exchanged under the section 385 regulations, in whole or in part, for stock to recognize any exchange gain or loss, other than any exchange gain or loss with respect to accrued but unpaid qualified stated interest that is not taken into account under paragraph (d)(1)(i) of this section at the time of the deemed exchange. * * *

(iii) *Section 108(e)(8)*. For purposes of section 108(e)(8), if the issuer of a debt instrument is treated as having retired all or a portion of the debt instrument in exchange for stock under paragraph (d)(1)(i) of this section, the stock is treated as having a fair market value equal to the adjusted issue price of that portion of the debt instrument as of the date of the deemed exchange.

(iv) * * *

(A) A debt instrument that is issued by a disregarded entity is deemed to be exchanged for stock of the regarded owner under § 1.385–3T(d)(4); * * *

* * * * *

§ 1.385–2 [Removed]

Par. 3. Section 1.385–2 is removed.

Par. 4. Section 1.385–3 is amended by revising paragraph (g)(4) to read as follows:

§ 1.385–3 Transaction in which debt proceeds are distributed or that have a similar effect.

* * * * *

(g) * * *

(4) *Debt instrument*. The term debt instrument means an interest that would, but for the application of this section, be treated as a debt instrument as defined in section 1275(a) and § 1.1275–1(d).

* * * * *

Par. 5. Section 1.1275–1 is amended by revising the last sentence of paragraph (d) to read as follows:

§ 1.1275–1 Definitions.

* * * * *

(d) * * * See § 1.385–3 for rules that treat certain instruments that otherwise would be treated as indebtedness as stock for federal tax purposes.

* * * * *

Kirsten Wielobob
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on September 21, 2018, 8:45 a.m. and published in the issue of the Federal Register for September 24, 2018, 83 F.R. 48265)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List[1]

Bulletin 2018–27 through 2018–41

Announcements:

2018-09, 2018-28 I.R.B. *206*
2018-12, 2018-30 I.R.B. *232*

Notices:

2018-48, 2018-28 I.R.B. *9*
2018-56, 2018-27 I.R.B. *3*
2018-58, 2018-33 I.R.B. *305*
2018-59, 2018-28 I.R.B. *196*
2018-60, 2018-31 I.R.B. *275*
2018-61, 2018-31 I.R.B. *278*
2018-62, 2018-34 I.R.B. *316*
2018-63, 2018-34 I.R.B. *318*
2018-64, 2018-35 I.R.B. *347*
2018-65, 2018-35 I.R.B. *350*
2018-67, 2018-36 I.R.B. *409*
2018-68, 2018-36 I.R.B. *418*
2018-69, 2018-37 I.R.B. *426*
2018-70, 2018-38 I.R.B. *441*
2018-71, 2018-41 I.R.B. *548*
2018-72, 2018-40 I.R.B. *522*
2018-73, 2018-40 I.R.B. *526*
2018-74, 2018-40 I.R.B. *529*
2018-75, 2018-41 I.R.B. *556*

Proposed Regulations:

REG-130244-17, 2018-41 I.R.B. *591*

REG-103474-18, 2018-32 I.R.B. *284*

REG-104397-18, 2018-41 I.R.B. *558*

REG-106977-18, 2018-27 I.R.B. *6*

REG-107892-18, 2018-35 I.R.B. *353*

REG-112176-18, 2018-37 I.R.B. *430*

Revenue Procedures:

2018-35, 2018-28 I.R.B. *204*
2018-36, 2018-38 I.R.B. *442*
2018-37, 2018-29 I.R.B. *210*
2018-38, 2018-31 I.R.B. *280*
2018-39, 2018-34 I.R.B. *319*
2018-40, 2018-34 I.R.B. *320*
2018-42, 2018-36 I.R.B. *424*
2018-43, 2018-36 I.R.B. *425*
2018-44, 2018-37 I.R.B. *426*
2018-45, 2018-37 I.R.B. *428*
2018-46, 2018-39 I.R.B. *460*
2018-47, 2018-39 I.R.B. *518*
2018-48, 2018-40 I.R.B. *521*

Revenue Procedures:—Continued

2018-49, 2018-41 I.R.B. *548*

Revenue Rulings:

2018-19, 2018-27 I.R.B. *1*
2018-20, 2018-28 I.R.B. *8*
2018-21, 2018-32 I.R.B. *282*
2018-22, 2018-34 I.R.B. *308*
2018-23, 2018-36 I.R.B. *405*
2018-24, 2018-36 I.R.B. *407*
2018-25, 2018-39 I.R.B. *445*
2018-26, 2018-40 I.R.B. *520*
2018-27, 2018-41 I.R.B. *546*

Treasury Decisions:

9834, 2018-31 I.R.B. *233*
9835, 2018-33 I.R.B. *288*
9836, 2018-33 I.R.B. *291*
9838, 2018-34 I.R.B. *309*
9839, 2018-35 I.R.B. *325*

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–01 through 2018–26 is in Internal Revenue Bulletin 2018–26, dated June 27, 2018.

Finding List of Current Actions on Previously Published Items[1]

Bulletin 2018–27 through 2018–41

Notices:

2014-5
Modified by
Notice 2018-69, 2018-37 I.R.B. *426*

2015-28
Modified by
Notice 2018-69, 2018-37 I.R.B. *426*

2016-57
Modified by
Notice 2018-69, 2018-37 I.R.B. *426*

2017-45
Modified by
Notice 2018-69, 2018-37 I.R.B. *426*

Revenue Procedures:

2015-27
Amplified by
Rev. Proc. 2018-39, 2018-34 I.R.B. *319*

2017-24
Amplified by
Rev. Proc. 2018-39, 2018-34 I.R.B. *319*

2018-31
Modified by
Rev. Proc. 2018-44, 2018-37 I.R.B. *426*

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–01 through 2018–26 is in Internal Revenue Bulletin 2018–26, dated June 27, 2018.

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, $300

INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (*www.irs.gov*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.