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Treas. Reg. Section 1.168(k)-2(e)(1)(ii)

Additional first year depreciation deduction for property acquired and placed in service after September 27, 2017

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(e) 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 (e)(1)(i)(B) or (g) 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 (f) of this section).



(ii) Computation. Except as provided in paragraph (g)(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 (g)(1) of this section, the additional first year depreciation deduction is not affected by a taxable year of less than 12 months. See paragraph (g)(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 (g)(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 (e)(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. The amounts of unadjusted depreciable basis attributable to the property's manufacture, construction, or production before January 1, 2027, are referred to as "progress expenditures." Rules similar to the rules in section 4.02(1)(b) of Notice 2007-36 (2007-17 I.R.B. 1000) (see §601.601(d)(2)(ii)(b) of this chapter) apply for determining progress expenditures, regardless of whether the property 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, or under a written contract that does not meet the definition of a binding contract in paragraph (b)(5)(iii) of this section. The IRS may publish procedural guidance in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter) that provides alternative procedures for complying with this paragraph (e)(1)(iii).

(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 (e)(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 (f) 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 (g)(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 (e) is illustrated by the following examples:

(i) 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).

(ii) 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).

(f) 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 (f)(1), the term class of property means:

(A) Except for the property described in paragraphs (f)(1)(ii)(B) and (D), and (f)(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 §1.167(a)-14(b);

(D) Qualified improvement property as defined in §1.168(b)-1(a)(5)(i)(C) and (a)(5)(ii) (acquired by the taxpayer after September 27, 2017, and placed in service by the taxpayer after September 27, 2017, and before January 1, 2018), 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) Each partner's basis adjustment in partnership assets under section 743(b) for each class of property described in paragraphs (f)(1)(ii)(A) through (F), and (f)(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. Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(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. Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(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 a lower-tier partnership; also 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 (f)(1)(i) of this section within the time and in the manner prescribed in paragraph (f)(1)(iii) of this section, the amount of depreciation allowable for that property under section 167 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 (f)(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. Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(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. Except as provided in paragraph (f)(6) of this section or as otherwise expressly provided by other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter), any election specified in paragraph (f)(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 (including a lower-tier 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 (f)(2)(i) of this section for a specified plant within the time and in the manner prescribed in paragraph (f)(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 (f)(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. Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(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. Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(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 (including a lower-tier partnership), or by the S corporation).

(iii) Failure to make election. If a taxpayer does not make the election specified in paragraph (f)(3)(i) of this section within the time and in the manner prescribed in paragraph (f)(3)(ii) of this section, the amount of depreciation allowable for qualified property under section 167 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 (f)(1)(i) of this section within the time and in the manner prescribed in paragraph (f)(1)(iii) of this section for the class of property in which the qualified property is included. Thus, any election specified in paragraph (f)(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 (f)(1) of this section for a class of property or in paragraph (f)(2) of this section for a specified plant, the depreciation adjustments under section 56 and the regulations in this part 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 (f)(3) of this section for all qualified property, see paragraphs (e)(1)(iv) and (e)(2)(ii) of this section.

(5)Revocation of election.

(i) In general. Except as provided in paragraphs (f)(5)(ii) and (f)(6) of this section, an election specified in this paragraph (f), 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 (f) 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 (f), 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.

(6)Special rules for 2016 and 2017 returns. For an election specified in this paragraph (f) for qualified property placed in service, or for a specified plant that is planted, or grafted to a plant that has already been planted, by the taxpayer during its taxable year that included September 28, 2017, the taxpayer should refer to Rev. Proc. 2019-33 (2019-34 I.R.B. 662) (see §601.601(d)(2)(ii)(b) of this chapter) for the time and manner of making the election on the 2016 or 2017 Federal tax return.

(7)Additional procedural guidance. The IRS may publish procedural guidance in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter) that provides alternative procedures for complying with paragraph (f)(1)(iii), (f)(1)(iv), (f)(2)(ii), (f)(2)(iii), (f)(3)(ii), (f)(3)(iii), or (f)(5)(i) of this section.

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