DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104397–18]

RIN 1545–BO74

Additional First Year Depreciation Deduction

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 (E.O.) 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 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 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.

■ **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 × $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.

[FR Doc. 2018–16716 Filed 8–3–18; 4:15 pm]

BILLING CODE 4830–01–P