DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9874]

RIN 1545–BO74

Additional First Year Depreciation Deduction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the additional first year depreciation deduction under section 168(k) of the Internal Revenue Code (Code). The final regulations reflect and clarify the increase of the benefit and expansion of the universe of qualifying property, particularly to certain classes of used property, authorized by the Tax Cuts and Jobs Act. The final regulations affect taxpayers who deduct depreciation for qualified property acquired and placed in service after September 27, 2017.

DATES:

Effective date: These regulations are effective on September 24, 2019.

Applicability date: For dates of applicability, see §§ 1.48–12(a)(2)(i), 1.167(a)–14(e)(3), 1.168(b)–1(b)(2), 1.168(d)–1(d)(2), 1.168(i)–4(g)(2), 1.168(i)–6(k)(4), 1.168(k)–2(h), 1.169–3(g), 1.179–6, 1.312–15(e), 1.704–1(b)(1)(ii)(*a*), 1.704–3(f), and 1.743–1(l). A taxpayer may choose to apply these final regulations, in their entirety, 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, provided the taxpayer consistently applies all rules in these final regulations. Additionally, a taxpayer may rely on the proposed regulations under section 168(k) in regulation project REG–104397–18 (2018–41 I.R.B. 558), for 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, and ending before September 24, 2019.

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SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 168(k). On August 8, 2018, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–104397–18) in the **Federal Register** (83 FR 39292) containing proposed regulations under section 168(k) (the August Proposed Regulations). The Summary of Comments and Explanation of Revisions section summarizes the provisions of section 168(k) and the provisions of the August Proposed Regulations, which are explained in greater detail in the preamble to the August Proposed Regulations.

The Treasury Department and the IRS received written and electronic comments responding to the August Proposed Regulations and held a public hearing on the proposed regulations on November 28, 2018. After full consideration of the comments received on the August Proposed Regulations and the testimony heard at the public hearing, this Treasury decision adopts the August Proposed Regulations with modifications in response to certain comments and testimony, as described in the Summary of Comments and Explanation of Revisions section. Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing in the Proposed Rule section of this edition of the **Federal Register** a notice of proposed rulemaking providing, also in response to the above-cited comments and testimony, additional proposed regulations under section 168(k) (REG–106808–19).

Summary of Comments and Explanation of Revisions

The Treasury Department and the IRS received comments from approximately 20 commenters in response to the August Proposed Regulations. All comments were considered and are available at *https://www.regulations.gov* or upon request. The comments addressing the August Proposed Regulations are summarized in this Summary of Comments and Explanation of Revisions section.

Section 168(k) was amended on December 22, 2017, by sections 12001(b)(13), 13201, and 13204 of the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054) (the ''Act''). Because of these amendments, the August Proposed Regulations and these final 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.

As discussed in the preamble to the August Proposed Regulations, the August Proposed Regulations and these final 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 August Proposed Regulations and these final regulations provide guidance to taxpayers in determining the additional first year depreciation deduction and the amount of depreciation otherwise allowable for this property.

Part I of this section provides an overview of section 168(k). Part II of this section addresses the operational rules. Part III of this section addresses the computation of the additional first year depreciation deduction and the elections under section 168(k). Part IV addresses the special rules for certain situations described in § 1.168(k)–2(g) of the final regulations (§ 1.168(k)–2(f) of the August Proposed Regulations).

I. Overview

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) 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.

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; that is, the property had to be new property.

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. In addition, 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. Also, 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)). A final example of the amendments by the Act to section 168(k) is 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), as amended by the Act, 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 percentage points 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, (2) 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), (3) which is water utility property, (4) which is a qualified film or television production as defined in section 181(d), for which a deduction would have been allowable under section 181 without regard to section 181(a)(2) or (g) or section 168(k), or (5) which is a 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) or (g) or section 168(k). ''Qualified property'' also is defined in section 168(k)(2)(A) as meaning property, 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 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 specified in 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, as defined in § 1.168(k)–2(b)(5)(iii) of these final regulations, 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.

Unless otherwise indicated, all references to section 168(k) hereinafter are references to section 168(k) as amended by the Act.

II. Operational Rules

A. Eligibility Requirements for Additional First Year Depreciation Deduction

The August Proposed Regulations and these final regulations follow section 168(k)(2) 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. The written and electronic comments that the Treasury Department and the IRS received with respect to each of these requirements are discussed below.

B. Property of a Specified Type

1. Property Eligible for the Additional First Year Depreciation Deduction

a. In General

The August Proposed Regulations and these final 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).

b. Qualified Improvement Property

The August Proposed Regulations and these final regulations provide that qualified property also 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. Multiple commenters requested clarification that qualified improvement property placed in service after 2017 also is qualified property eligible for the additional first year depreciation deduction. Another commenter requested that the IRS not challenge or audit taxpayers that treat qualified improvement property placed in service after 2017 as 15-year property eligible for the additional first year depreciation deduction.

For property placed in service after December 31, 2017, section 13204 of the Act amended section 168(k) to eliminate qualified improvement property as a specific category of qualified property, and 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. The legislative history of section 13204 of the Act provides that the MACRS recovery period is 15 years for qualified improvement property. Conf. Rep. No. 115–466, at 367 (2017). However, section 168(e), as amended by section 13204 of the Act, does not classify qualified improvement property as having a recovery period of 20 years or less. Consequently, a legislative change must be enacted to provide for a recovery period of 20 years or less for qualified improvement property placed in service after 2017 to be qualified property. Accordingly, the Treasury Department and the IRS decline to adopt these comments.

c. Qualified Restaurant Property and Qualified Retail Improvement Property

The August Proposed Regulations and these final 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. One commenter requested clarification that qualified retail improvement property, and qualified restaurant property that is qualified improvement property, also are qualified property eligible for the additional first year depreciation deduction. In making this request, the Treasury Department and the IRS assume the commenter is concerned about such property that is placed in service after 2017.

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 classifications for qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property. Because these property classifications are no longer in effect for property placed in service after 2017, the Treasury Department and the IRS decline to adopt this comment.

d. Qualified Film, Television, or Live Theatrical Production

Consistent with section 168(k)(2)(A)(i)(IV) and (V), the August Proposed Regulations provide that qualified property includes a qualified film or television production, or a qualified live theatrical production, for which a deduction would have been allowable under section 181 without regard to section 181(a)(2) and (g), or section 168(k). One commenter requested guidance on when a qualified film had to be produced by an unrelated party so that a taxpayer acquiring the film now can claim additional first year depreciation. In making this request, the Treasury Department and the IRS assume the commenter interpreted the rule as allowing the additional first year depreciation deduction for a used film production. Another commenter requested clarification on whether a used film or television production qualifies for the additional first year depreciation deduction. These requests involve the interaction of sections 168(k) and 181.

Section 181 allows a taxpayer to elect to deduct up to $15 million of the aggregate production costs of a qualified film, television, or live theatrical production for the taxable year in which the costs are paid or incurred by the taxpayer instead of capitalizing the costs and recovering such costs through depreciation deductions. See § 1.181–1(a)(1). Pursuant to § 1.181–1(a)(3), production costs do not include the cost of obtaining a production after its initial release or broadcast. Further, § 1.181–1(a)(1) provides that only an owner of the qualified film or television production is eligible to a make a section 181 election. Section 1.181–1(a)(2)(i) defines an owner, for purposes of §§ 1.181–1 through –6, as any person that is required under section 263A to capitalize the costs of producing the production into the cost basis of the production, or that would be required to do so if section 263A applied to that person. Pursuant to § 1.181–1(a)(2)(ii), a person that acquires a finished or partially-finished production is treated as an owner of that production for purposes §§ 1.181–1 through –6, but only if the production is acquired prior to its initial release or broadcast. Section 1.181–1(a)(7) defines initial release or broadcast, for purposes of §§ 1.181–1 through 1.181–6, as the first commercial exhibition or broadcast of a production to an audience.

The Treasury Department and the IRS agree that clarification is needed on whether section 168(k) applies to a used qualified film, television, or live theatrical production. The deduction which would have been allowable under section 181 and §§ 1.181–1 through1.181–6 for a qualified film, television, or live theatrical production is only for production costs paid or incurred by an owner of the qualified film or television production prior to its initial release or broadcast or by an owner of the qualified live theatrical production prior to its initial live staged performance. Accordingly, section 168(k) does not apply to a used qualified film, television, or live theatrical production (that is, such production acquired after its initial release or broadcast, or after its initial live staged performance, as applicable). However, the final regulations clarify that only production costs of the qualified film, television, or live theatrical production for which a deduction would have been allowable under section 181 and the regulations under section 181 are eligible for the additional first year depreciation deduction. The final regulations also clarify that the owner, as defined in § 1.181–1(a)(2), of the qualified film, television, or live theatrical production is the only taxpayer eligible to claim the additional first year depreciation for such production and must be the taxpayer that places such production in service.

A commenter requested clarification that a licensee may deduct the additional first year depreciation for the cost of acquiring a license to a qualified film (for example, the cost of acquiring a license of video on demand rights for a limited term or the cost of acquiring a license of rights in a foreign country for a limited term). As stated in the preceding paragraphs, only the owner of the qualified film, television, or live theatrical production is eligible to make a section 181 election. Section 1.181–1(a)(2)(ii) provides that a person that acquires only a limited license or right to exploit a production is not an owner of a production for purposes of §§ 1.181–1 through 1.181–6. Therefore, for the reasons stated above, the

Treasury Department and the IRS decline to adopt this comment.

One commenter suggested that the final regulations clarify when a qualified film, television, or live theatrical production had to be produced to be eligible for the additional first year depreciation deduction. Section 181 is effective for a qualified film or television production commencing after October 22, 2004, and for a qualified live theatrical production commencing after December 31, 2015. Because this suggestion concerns the effective dates of section 181, the suggestion is beyond the scope of these final regulations. Accordingly, the Treasury Department and the IRS decline to adopt this suggestion.

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

a. In General

The August Proposed Regulations and these final 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 alternative depreciation system of section 168(g) (ADS); (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), as in effect before the enactment of the Act, to property placed in service in any taxable year beginning before January 1, 2018; or (6) property described in section 168(k)(9)(A) or (B).

b. Property Required To Be Depreciated Under the ADS

Property described in section 168(g)(1)(A), (B), (C), (D), (F), or (G) is required to be depreciated under the ADS. In addition, other provisions of the Code require property to be depreciated under the ADS. 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), and property described in section 280F(b)(1) is required to be depreciated under the ADS.

The Treasury Department and the IRS are aware that taxpayers and practitioners have questioned whether using the ADS to determine the adjusted basis of the taxpayer's qualified business asset investment pursuant to section 250(b)(2)(B) or 951A(d)(3) causes the taxpayer's tangible property to be ineligible for the additional first year depreciation deduction. The final regulations clarify that it does not make that property ineligible for the additional first year depreciation deduction. The final regulations also clarify that using the ADS to determine the adjusted basis of the taxpayer's tangible assets for allocating business interest expense between excepted and non-excepted trades or businesses under section 163(j) does not make that property ineligible for the additional first year depreciation deduction. In both instances, however, this rule does not apply if the property is required to be depreciated under the ADS pursuant to section 168(g)(1)(A), (B), (C), (D), (F), or (G), or other provisions of the Code other than section 163(j), 250(b)(2)(B), or 951A(d)(3).

If section 168(h)(6) applies (property owned by partnerships treated as tax-exempt use property), the Treasury Department and the IRS also are aware that taxpayers and practitioners have questioned whether only the tax-exempt entity's proportionate share of the property or the entire property is not eligible for the additional first year depreciation deduction. If section 168(h)(6) applies, section 168(h)(6)(A) provides that the tax-exempt entity's proportionate share of the property is treated as tax-exempt use property. Accordingly, the final regulations clarify that only the tax-exempt entity's proportionate share of the property is described in section 168(g)(1)(B) and is not eligible for the additional first year depreciation deduction.

c. Property Described in Section 168(k)(9)

i. In General

Consistent with section 168(k)(9)(A), the August Proposed Regulations and these final regulations provide that qualified property does not include any property that is primarily used in a trade or business described in section 163(j)(7)(A)(iv). Further, consistent with section 168(k)(9)(B), the August Proposed Regulations and these final regulations provide that qualified property does not include any property used in a trade or business that has had floor plan financing indebtedness if the floor plan financing interest related to such indebtedness is taken into account under section 168(j)(1)(C).

Because section 163(j) applies to taxable years beginning after December 31, 2017, the August Proposed Regulations and these final regulations also provide that these exclusions from the additional first year depreciation deduction apply to property placed in service in any taxable year beginning after December 31, 2017. The August Proposed Regulations did not provide any further guidance under section 168(k)(9).

Several commenters requested guidance on whether a taxpayer that leases property to a trade or business described in section 168(k)(9) is eligible to claim the additional first year depreciation for the property. Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address these comments.

ii. Property Described in Section 168(k)(9)(A) (Regulated Public Utility Property)

The Treasury Department and the IRS are aware that taxpayers and practitioners have questioned how to determine whether property is primarily used in a trade or business described in section 168(k)(9)(A). Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address this question.

Several commenters requested guidance on whether property acquired before September 28, 2017, by a trade or business described in section 168(k)(9)(A) is eligible for the additional first year depreciation deduction provided by section 168(k) as in effect before the enactment of the Act. This comment is related to the comment discussed in part II(D)(3) of this Summary of Comments and Explanation of Revisions section regarding the election provided in section 3.02(2)(b) of Rev. Proc. 2011–26 (2011–16 I.R.B. 664). Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address both comments.

Another commenter requested that the Treasury Department and the IRS change the position in the August Proposed Regulations so that qualified property does not include property that is primarily used in a trade business described in section 168(k)(9)(A), acquired after September 27, 2017, and placed in service before January 1, 2018. The commenter asserted that the definition of a trade or business in section 163(j)(7)(A)(iv) is not new, and regulated public utility companies were not expecting such property to be eligible for the additional first year depreciation deduction. The definition of a trade or business under section 163(j)(7)(A)(iv) is outside the scope of these final regulations. Further, because section 163(j) applies to taxable years beginning after December 31, 2017, the Treasury Department and the IRS believe that the exclusion of property described in section 168(k)(9)(A) from the additional first year depreciation deduction applies to such property placed in service in taxable years beginning after December 31, 2017. Accordingly, the Treasury Department and the IRS decline to adopt this suggestion.

iii. Property Described in Section 168(k)(9)(B) (Floor Plan Financing Indebtedness)

A commenter requested guidance on when floor plan financing interest is ''taken into account'' for purposes of section 168(k)(9)(B). If section 168(k)(9)(B) applies for a taxable year, the Treasury Department and the IRS also are aware that taxpayers and practitioners have questioned whether ''has had floor plan financing indebtedness'' in section 168(k)(9)(B) means that the additional first year depreciation deduction is not allowed for property placed in service by a trade or business described in section 168(k)(9)(B) in any subsequent taxable year. Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address both matters.

C. New and Used Property

1. New Property

The August Proposed Regulations and these final regulations generally retain the original use rules in § 1.168(k)–1(b)(3). Pursuant to section 168(k)(2)(A)(ii), the August Proposed Regulations and these final regulations do not provide any date by which the original use of the property must commence with the taxpayer.

The August Proposed Regulations and these final regulations define original use as meaning the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. A commenter requested that this definition be revised to provide that original use means the first use of the property within the United States. The definition of original use in the August Proposed Regulations and in § 1.168(k)–1(b)(3) is the same as the definition of such term in the legislative history of the Job Creation and Worker Assistance Act of 2002, Public Law 107–147 (116 Stat. 21), that added section 168(k) to the Code. There is no indication in the legislative history of section 13201 of the Act that Congress intended to change the definition of original use. Accordingly, the Treasury Department and the IRS decline to adopt this comment.

2. Used Property

a. In General

Pursuant to section 168(k)(2)(A)(ii) and (k)(2)(E)(ii), the August Proposed Regulations and these final regulations provide that the acquisition of used property is eligible for the additional first year depreciation deduction if such acquisition meets the following three 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 § 1.179–4(c)(2); and (3) the acquisition of the property meets the cost requirements of section 179(d)(3) and § 1.179–4(d).

Several commenters requested a definition of ''predecessor.'' One commenter suggested that the term be limited to a transfer described in section 381. Another commenter suggested that the term be comprehensively defined, including transactions between partners and partnerships, or shareholders and corporations. This commenter also asserted that restrictions based on use by a predecessor should be removed because the language is not in section 168(k).

Besides the used property requirements in the August Proposed Regulations, the term ''predecessor'' is used in the acquisition requirements in the proposed regulations and in § 1.168(k)–1(b)(4). The Treasury Department and the IRS have determined that the inclusion of predecessor in both requirements is necessary and appropriate to prevent abuse by taxpayers to churn assets. Accordingly, the Treasury Department and the IRS do not adopt the suggestion to remove the term ''predecessor.''

However, the Treasury Department and the IRS agree that a definition of predecessor is needed. The final regulations provide that a predecessor includes (i) a transferor of an asset to a transferee in a transaction to which section 381(a) applies, (ii) a transferor of an asset to a transferee in a transaction in which the transferee's basis in the asset is determined, in whole or in part, by reference to the basis of the asset in the hands of the transferor, (iii) a partnership that is considered as continuing under section 708(b)(2), (iv) the decedent in the case of an asset acquired by an estate, or (v) a transferor of an asset to a trust.

b. Depreciable Interest

The August Proposed Regulations and these final regulations provide that 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.

i. Definition

A commenter requested a definition of ''depreciable interest'' or a clarification that the term has the meaning as applied for purposes of section 167. The term ''depreciable interest'' in the August Proposed Regulations and these final regulations has the same meaning as that term is used for purposes of section 167. The property must be used in the taxpayer's trade or business or held by the taxpayer for the production of income pursuant to section 167(a). In addition, case law provides that the person who made the capital investment in the property is the person entitled to a return on that capital by means of claiming a depreciation deduction. *Gladding Dry Goods Co.* v. *Commissioner,* 2 B.T.A. 336, 338 (1925). Legal title and the right of possession are not determinative. *Hopkins Partners* v. *Commissioner,* T.C. Memo. 2009–107 (*citing Gladding Dry Goods,* 2 B.T.A. at 338). Instead, the question is which party actually invested in the property. Id.

The issue of whether a taxpayer has a depreciable interest in property generally arises when a lessor or a lessee makes improvements to property. If a lessor makes improvements at the lessor's own expense, the lessor is entitled to depreciation deductions even though the lessee has the use of the improvements. *Gladding Dry Goods,* 2 B.T.A. at 338–339; *Hopkins Partners.* If a lessee makes improvements and the title to the improvements vests immediately in the lessor, the lessor's bare legal title does not preclude the lessee from recovering its investment in the improvements through depreciation deductions. *Hopkins Partners;* see also *McGrath* v. *Commissioner,* T.C. Memo. 2002–231. However, when the lessee makes improvements as a substitute for rent, the lessee has no depreciable interest in the leasehold improvement. *Hopkins Partners* (*citing Your Health Club, Inc.* v. *Commissioner,* 4 T.C. 385, 390 (1944), acq., 1945 C.B. 7). Because the determination of whether a person has a depreciable interest in the property depends on the facts and circumstances and concerns whether the property is eligible for the depreciation deduction under section 167, the request is beyond the scope of these final regulations. Accordingly, the Treasury Department and the IRS decline to adopt this comment.

ii. Safe Harbor

The preamble to the August Proposed Regulations requested 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. Multiple commenters made suggestions. One commenter suggested a look-back period of five years from the placed-in-service date of the property, with a rebuttable presumption that neither the taxpayer nor a predecessor held a depreciable interest in the property prior to the 5-year period. Other commenters suggested a look-back period of three years, including the current taxable year. Another commenter suggested that the prior use rule apply only to property initially owned on or after the date of enactment of the Act and a look-back period that is the shorter of the applicable recovery period of the property or 10 years. Another commenter suggested no look-back period for used property to be used in the United States for the first time. Finally, another commenter suggested the following three alternatives for determining if property is previously used by the taxpayer or a predecessor: The prior use or disposition of the property occurred pursuant to a plan that included the taxpayer's reacquisition of the property; the person possesses actual or constructive knowledge of the prior use of the property; or provide a look-back period measured by reference to the property's recovery period, such as the lesser of the property's recovery period or a set number of years.

After considering these suggestions, the Treasury Department and the IRS have decided to provide a look-back period of five calendar years immediately prior to the taxpayer's current placed-in-service year of the property. We believe that five years is the appropriate number of years to reduce the potential for churning assets. Most assets have a recovery period of five or seven years under section 168(c). In addition, we believe that this bright-line test will be easy for both taxpayers and the IRS to administer. Therefore, the final regulations provide that to determine if the taxpayer or a predecessor had a depreciable interest in the property at any time prior to acquisition, only the five calendar years immediately prior to the taxpayer's current placed-in-service year of the property are taken into account. If the taxpayer and a predecessor have not been in existence for this entire 5-year period, only the number of calendar years the taxpayer and the predecessor have been in existence is taken into account.

iii. Used in the United States for the First Time

A commenter requested the August Proposed Regulations be revised to allow the used property requirements be met for property that will be used in the United States for the first time and that is acquired at its fair market value by a U.S. taxpayer from a non-U.S. related party, and for property that is acquired by a U.S. affiliate from a non-U.S. parent corporation in an arm's-length transaction. The statutory language of section 168(k)(2)(E)(ii) and the legislative history of section 13201 of the Act do not support such a rule. Conf. Rep. No. 115–466, at 353. Accordingly, the Treasury Department and the IRS decline to adopt this comment.

iv. Substantial Renovation of Property

The Treasury Department and the IRS are aware that taxpayers and practitioners have questioned whether a taxpayer that purchases substantially renovated property is eligible to claim the additional first year depreciation deduction for such property (assuming all other requirements are met).

The August Proposed Regulations and these final regulations retain the original use rules in § 1.168(k)–1(b)(3)(i). Under these rules, the cost of reconditioned or rebuilt property does not satisfy the original use requirement. However, if the cost of the used parts in such property is not more than 20 percent of the total cost of the property, whether acquired or self-constructed, the property is treated as meeting the original use requirement.

Consistent with the original use rules, the final regulations provide that if a taxpayer acquires and places in service substantially renovated property and the taxpayer or a predecessor previously had a depreciable interest in the property before it was substantially renovated, that taxpayer's or predecessor's depreciable interest is not taken into account for determining whether the substantially renovated property was used by the taxpayer or a predecessor at any time before its acquisition by the taxpayer. For this purpose and consistent with the original use rules, property is substantially renovated if the cost of the used parts is not more than 20 percent of the total cost of the substantially renovated property, whether acquired or self-constructed.

c. Section 336(e) Election

Section 1.179–4(c)(2) provides that property deemed to have been acquired by a new target corporation as a result of a section 338 election will be considered acquired by purchase for purposes of § 1.179–4(c)(1). Upon a section 338 election, the target corporation (old target) is treated as transferring all of its assets to an unrelated person in exchange for consideration that includes the discharge of its liabilities, and a different corporation (new target) is treated as acquiring all of its assets from an unrelated person in exchange for consideration that includes the assumption of those liabilities. Section 1.338–1(a)(1). Although both old target and new target are a single corporation under corporate law, § 1.338–1(a)(1) provides that they generally are considered to exist as separate corporations for purposes of subtitle A of the Code.

The Federal income tax consequences of a section 336(e) election made with respect to a qualified stock disposition not described, in whole or in part, in section 355(d)(2) or (e)(2) are similar to the Federal income tax consequences of a section 338 election. See § 1.336–2(b)(1). Accordingly, the August Proposed Regulations and these final regulations modify § 1.179–4(c)(2) to include property deemed to have been acquired by a new target corporation pursuant to a section 336(e) election made with respect to such a qualified stock disposition. Thus, property deemed to have been acquired by a new target corporation as a result of either a section 338 election or a section 336(e) election made with respect to a qualified stock disposition not described, in whole or in part, in section 355(d)(2) or (e)(2) is considered acquired by purchase for purposes of § 1.179–4(c)(1).

Conversely, if a section 336(e) election is made with respect to a qualified stock disposition that is described, in whole or in part, in section 355(d)(2) or (e)(2), old target is treated as selling its assets to an unrelated person but then purchasing the assets back (sale-to-self model). Section 1.336–2(b)(2). Because the sale-to-self model does not deem a new target corporation to acquire the assets from an unrelated person, commenters have questioned whether assets deemed purchased in such a qualified stock disposition should be considered acquired by purchase for purposes of § 1.179–4(c)(1). The final regulations clarify that the reference to section 336(e) in § 1.179–4(c)(2) does not include dispositions described in section 355(d)(2) or (e)(2) because, under the sale-to-self model, old target will be treated as acquiring the assets in which it previously had a depreciable interest.

d. Rules Applying to Consolidated Groups

The August 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 proposed rule, a consolidated group is 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 August Proposed Regulations also do not allow the additional first year depreciation deduction 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. 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.

Multiple commenters requested clarification of these rules. Concurrently with the publication of the final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address these comments.

e. Series of Related Transactions

Section 1.168(k)–2(b)(3)(iii)(C) of the August Proposed Regulations provides that, in the case of a series of related transactions, property is 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 (related transactions rule). We received comments requesting clarification on the application of the related transactions rule in certain circumstances. Concurrently with the publication of the final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address these comments.

f. Application to Partnerships

The August Proposed Regulations and these final regulations address whether certain section 704(c) allocations, the basis of distributed property determined under section 732, and basis adjustments under sections 734(b) and 743(b) qualify for the additional first year depreciation deduction. One commenter recommended applying the principles underlying section 197(f)(9) to analyze these issues under section 168(k). The Treasury Department and the IRS considered this approach and determined that it was not appropriate for purposes of section 168(k). Although the regulations under section 197(f)(9) apply an aggregate approach with respect to basis adjustments under sections 732, 734, and 743 (as well as certain section 704(c) allocations), the Treasury Department and the IRS looked to the purpose of section 168(k), not section 197(f)(9), to determine how to best approach the entity versus aggregate theory question. Furthermore, the statutory language found in section 197(f)(9)(E), which treats each partner in a partnership as having owned and used the partner's proportionate share of the partnership's assets for purposes of determining basis increases under sections 732, 734, and 743, is not in section 168(k). Therefore, the August Proposed Regulations and these final regulations determine the proper treatment of each basis adjustment under section 168(k) on a case-by-case basis.

One commenter to the August Proposed Regulations asked for clarification regarding a partner's depreciable interest in property held by a partnership. Concurrently with the publication of the final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address this comment.

i. Section 704(c) Remedial Allocations

The August Proposed Regulations and these final regulations provide that remedial allocations under section 704(c) do not qualify for the additional first year depreciation deduction. The same rule applies in the case of revaluations of partnership property (reverse section 704(c) allocations).

One commenter requested that the final regulations permit immediate expensing of excess book basis under the remedial allocation method in § 1.704–3(d) and corresponding remedial allocations of income and depreciation. The Treasury Department and the IRS decline to adopt this comment because the underlying property that gives rise to remedial allocations was contributed to the partnership in a section 721 transaction and has a basis described in section 179(d)(2)(C), which is in violation of section 168(k)(2)(E)(ii)(I), as well as the original use requirement.

ii. Section 734(b) Adjustments

The August Proposed Regulations and these final regulations provide that section 734(b) basis adjustments are not eligible for the additional first year depreciation deduction.

One commenter suggested that the Treasury Department and the IRS should permit immediate expensing of basis adjustments under section 734(b)(1)(A) allocable to qualified property. Section 734(b)(1)(A) 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 amount of any gain recognized to the distributee partner under section 731(a)(1). The Treasury Department and the IRS decline to adopt this comment because section 734(b) adjustments are made to the common basis of partnership property and do not satisfy the original use clause of section 168(k)(2)(A)(ii) or the used property requirement of section 168(k)(2)(E)(ii)(I).

iii. Section 743(b) Adjustments

The August Proposed Regulations and these final regulations 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.

The August 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.

One commenter recommended that the final regulations require consistent treatment for section 743(b) adjustments in a class of property and all other qualified property in the same class and placed in service in the same taxable year. The Treasury Department and the IRS believe that taxpayers should have the flexibility to use or elect out of the additional first year depreciation deduction for section 743(b) adjustments in a class of property without being bound to that choice for all other qualified property in the same class and placed in service in the same taxable year. Therefore, the final regulations retain the rule of the August Proposed Regulations.

One commenter requested that upper-tier partnerships be able to make an election under section 168(k)(7), or not, for both qualified property held directly by the upper-tier partnership and qualified property held indirectly through lower-tier partnerships. The Treasury Department and the IRS believe that a system of upper-tier partnerships making this election on behalf of lower-tier partnerships would be difficult to administer, and decline to adopt this comment. Lower-tier partnerships can make a section 168(k)(7) separately or may choose not to make that election.

One commenter suggested that there could be potential confusion with the language that would be added to § 1.743–1(j)(4)(i)(B)(*1*) by the August Proposed Regulations. This commenter stated that the addition of ''notwithstanding the above'' to that provision could be read to negate other provisions of § 1.743–1(j)(4)(i)(B). The Treasury Department and the IRS did not intend this implication. In these final regulations, the Treasury Department and the IRS have clarified this section by removing ''notwithstanding the above.''

The preamble to the August Proposed Regulations provides that a section 743(b) basis adjustment is eligible for the additional first year depreciation deduction provided all of the requirements of section 168(k) are met and assuming § 1.743–1(j)(4)(i)(B)(*2*) does not apply. Some commenters asked for clarification regarding the application of § 1.743–1(j)(4)(i)(B)(*2*). Section 1.743–1(j)(4)(i)(B)(*2*) provides that, if a partnership uses the remedial allocation method under § 1.704–3(d) with respect to an item of the partnership's recovery property, then the portion of any section 743(b) basis increase for that property that is attributable to section 704(c) built-in gain is recovered over the remaining recovery period for the partnership's excess book basis in the property as determined in the final sentence of § 1.704–3(d)(2). This would preclude the partner from taking the additional first year depreciation deduction for the portion of the section 743(b) basis increase attributable to section 704(c) built-in gain. Section 1.743–1(j)(4)(i)(B)(*2*) further provides that any remaining portion of a section 743(b) basis increase is recovered under § 1.743–1(j)(4)(i)(B)(*1*), which treats a section 743(b) basis increase as newly-purchased property placed in service when the transfer of the partnership interest occurs. Section 1.743–1(j)(4)(i)(B)(*1*) also provides that any applicable recovery period and method may be used for the basis increase. Therefore, under the August Proposed Regulations, the additional first year depreciation deduction is available for the portion of a section 743(b) basis increase that is not attributable to section 704(c) built-in gain, regardless of the section 704(c) method used, assuming all the requirements of section 168(k) are satisfied.

One commenter requested that the final regulations permit a partnership to use the additional first year depreciation deduction with respect to the portion of the section 743(b) basis increase that is attributable to section 704(c) built-in gain, even if the partnership is using the remedial allocation method with respect to the property. The Treasury Department and the IRS agree with this comment. However, an exception to this rule is needed in the case of publicly traded partnerships (within the meaning of section 7704(b)) to maintain fungibility for publicly traded partnership units. Thus, the final regulations amend § 1.743–1(j)(4)(i)(B)(*2*) to provide an exception to the rule that the portion of a section 743(b) basis increase that is attributable to section 704(c) built-in gain is recovered over the remaining recovery period for the partnership's excess book basis in the property. This exception applies only in the case of a partnership that is not a publicly traded partnership and that is recovering a section 743(b) basis increase using the additional first year depreciation deduction under section 168(k). If this exception applies, the entire section 743(b) basis increase is eligible for the additional first year depreciation. For publicly traded partnerships, the rules of the August Proposed Regulations described in the preceding paragraph continue to apply.

g. Syndication Transaction

The syndication transaction rule in the August Proposed Regulations and these final regulations is based on the rules in section 168(k)(2)(E)(iii) for syndication transactions.

For new or used property, the August 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, has a depreciable interest in 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.

If the lessor reacquires the property, a commenter requested that the August Proposed Regulations be clarified to provide that the lessor did not previously have a depreciable interest in the property. The Treasury Department and the IRS agree with this suggestion. Accordingly, the final regulations clarify that, if a transaction is within the rules described in the preceding paragraph, the purchaser of the property in the last sale during the three-month period is the original user of the property, if the lessor acquired and placed in service new property, and is the taxpayer having a depreciable interest in the property, if the lessor acquired and placed in service used property. Neither the lessor nor any intermediate purchaser is treated as previously having a depreciable interest in the property.

h. Sale-Leaseback Transaction

Because section 13201 of the Act removed the rules regarding sale-leasebacks, the August Proposed Regulations did 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. A commenter requested that the depreciable interest rule in the August Proposed Regulations be changed to a never-have-depreciated test so that a seller-lessee in a sale-leaseback transaction that exercises the option to purchase the property at the end of the lease term will meet the used property rules in the proposed regulations. Alternatively, the commenter suggested § 1.168(k)–2(f)(1) of the August Proposed Regulations be revised to allow the additional first year depreciation deduction in the situation described in the preceding sentence provided the sale-leaseback occurred in the same taxable year in which the seller-lessee placed the property in service. The commenter asserted that leased assets should not be treated differently than other used property. Another commenter asserted that a rule similar to the one in § 1.168(k)–1(b)(3)(iii)(A) should be provided when the sale-leaseback occurs within a very short period of time after the property is placed in service by the seller-lessee.

The Treasury Department and the IRS have decided not to adopt these comments, because section 13201 of the Act removed the rules regarding sale-leasebacks. However, the Treasury Department and the IRS believe that an exception to the depreciable interest rule is appropriate when the taxpayer disposes of property within a short period of time after the taxpayer placed such property in service. Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that provide this proposed rule.

D. Date of Acquisition

1. In General

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

Pursuant to section 13201(h)(1)(A) of the Act, the August Proposed Regulations and these final 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.

The August 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. Many commenters disagreed with this position because it is not supported by the legislative history of section 13201 of the Act, it is a departure from the self-constructed property rules in § 1.168(k)–1(b)(4)(iii), and it is administratively burdensome. The Treasury Department and the IRS have reconsidered their decision. Accordingly, § 1.168(k)–2(b)(5)(ii)(A) and (b)(5)(iv) of the final 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 not acquired pursuant to a written binding contract but is self-constructed property.

The August Proposed Regulations also provide that 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 Treasury Department and the IRS are aware that some contracts are not binding contracts on the date the contract is entered into (for example, due to a contingency clause). Accordingly, § 1.168(k)–2(b)(5)(ii)(B) of the final regulations provides that the acquisition date of property that the taxpayer acquired pursuant to a written binding contract is the later of (1) the date on which the contract was entered into; (2) the date on which the contract is enforceable under State law; (3) if the contract has one or more cancellation periods, the date on which all cancellation periods end; or (4) if the contract has one or more contingency clauses, the date on which all conditions subject to such clauses are satisfied. For this purpose, a cancellation period is the number of days stated in the contract for any party to cancel the contract without penalty, and a contingency clause is one that provides for a condition (or conditions) or action (or actions) that is within the control of any party or a predecessor.

2. Written Binding Contract

A commenter requested clarification on whether the liquidated damages rule in § 1.168(k)–2(b)(5)(iii)(A) in the August Proposed Regulations applies only to a breach by the purchaser. A similar question was raised in comments on § 1.168(k)–1T regarding the rule stating that 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. At that time, the Treasury Department and the IRS decided that the limitations should fall on both parties, the purchaser and the seller. The same should apply in the instant case. Accordingly, the Treasury Department and the IRS decline to adopt this comment.

The Treasury Department and the IRS are aware that taxpayers and practitioners have questioned how to apply the 5-percent liquidated damages rule in the August Proposed Regulations when the contract has multiple damage provisions. The Treasury Department and the IRS intended that only the provision with the highest damages be taken into account in determining whether the contract limits damages. The final regulations clarify this intention.

Another commenter requested clarification on whether any of the costs of property acquired before September 28, 2017, pursuant to a written binding contract, and placed in service after 2017 are eligible for the additional first year depreciation deduction under section 168(k). If some, but not all, of the costs are eligible, or if the costs are subject to the different applicable percentages, the commenter also requested that a basis allocation rule be provided. This comment is related to the comment discussed in part II(D)(3) of this Summary of Comments and Explanation of Revisions section regarding the election provided in section 3.02(2)(b) of Rev. Proc. 2011–26 (2011–16 I.R.B. 664). Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address these comments.

The Treasury Department and the IRS are aware that taxpayers and practitioners are having difficulty applying the binding contract rules in the August Proposed Regulations to transactions involving the acquisition of an entity. Because those rules were written to apply to the purchase of an asset instead of an entity, the Treasury Department and the IRS recognize that a binding contract rule for an acquisition of a trade or business, or an entity, is needed. The Treasury Department and the IRS also are aware that, in some cases, a taxpayer did not acquire property pursuant to a written binding contract. Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address these issues.

3. 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 August Proposed Regulations and these final 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. As stated in part II(D)(1) of this Summary of Comments and Explanation of Revisions section, the final 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 is self-constructed property by the taxpayer. In this case, these final regulations also 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 such property after September 27, 2017. The August Proposed Regulations and these final 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.

Two commenters requested clarification on whether the cost of a component of a larger self-constructed property that is acquired under a binding contract entered into before September 28, 2017, is included in the safe harbor for determining when manufacturing, construction, or production of the larger self-constructed property begins. Consistent with § 1.168(k)–1(b)(4)(iii)(B)(*2*), the safe harbor in the August Proposed Regulations and these final regulations do not provide a date restriction for calculation of the 10 percent. Accordingly, examples in § 1.168(k)–2(d)(3)(iv), which has the same safe harbor as in § 1.168(k)–2(b)(5)(iv), illustrate that the cost of such component is taken into account for determining whether the taxpayer has paid or incurred 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) under the safe harbor. If the cost of the acquired component is 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), the manufacture, construction, or production of the larger self-constructed property begins on the date on which the taxpayer paid or incurred the cost of such component.

A commenter requested clarification on whether the 100-percent additional first year depreciation deduction is allowable for self-constructed property owned by a trade or business described in section 163(j)(7)(A)(iv) (regulated public utility) where the construction of such property begins after September 27, 2017, and the property is placed in service in a taxable year beginning after 2017. In such case, the property is not eligible for the 100-percent additional first year depreciation deduction pursuant to section 168(k)(9)(A). *Example 11* is provided in § 1.168(k)–2(b)(5)(viii)(K) of these final regulations to illustrate this point.

Multiple commenters requested that the final regulations provide an election similar to the one provided in section 3.02(2)(b) of Rev. Proc. 2011–26 for components acquired or self-constructed after September 27, 2017, of larger self-constructed property when the manufacture, construction, or production of the larger self-constructed property begins before September 28, 2017. Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that address these comments.

III. Computation of Additional First Year Depreciation Deduction and Elections Under Section 168(k)

A. Computation of Additional First Year Depreciation Deduction

Pursuant to section 168(k)(1)(A), the August Proposed Regulations and these final 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 August Proposed Regulations and these final regulations also provide that the additional first year depreciation deduction is allowed for both regular tax and alternative minimum tax (AMT) purposes. The August Proposed Regulations and these final regulations provide rules similar to those in § 1.168(k)–1(d)(2) for determining the amount of depreciation otherwise allowable for qualified property.

A commenter requested clarification on whether the deduction under section 181 for a qualified film, television, or live theatrical production is taken before the additional first year depreciation deduction for the same production. Section 181(b) provides that with respect to the basis of any qualified film or television production or any qualified live theatrical production to which an election under section 181(a) is made, no other depreciation or amortization deduction shall be allowable. Consequently, if the owner of the qualified film, television, or live theatrical production makes an election under section 181(a), the basis of the production is reduced by the amount of the section 181 deduction before the additional first year depreciation deduction is computed. Accordingly, the final regulations revise the definition of unadjusted depreciable basis in § 1.168(b)–1(a)(3) to reflect the reduction in basis for the amount the taxpayer elects to treat as an expense under section 181.

B. Elections Under Section 168(k)

The August Proposed Regulations and these final 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 August Proposed Regulations and these final 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.

Several commenters requested relief to make late elections under section 168(k)(7) or (10) for property placed in service during the taxpayer's taxable year that includes September 28, 2017, because some taxpayers already filed their Federal tax returns for that taxable year before the proposed regulations were issued. The commenters also noted that a taxpayer with a due date, with extensions, of September 15, 2018, or October 15, 2018, for its Federal tax return for the taxable year that includes September 28, 2017, may not have had sufficient time to analyze the proposed regulations to make a timely election under section 168(k)(7) or (10). The IRS issued Revenue Procedure 2019–33 (2019–34 I.R.B. 662) to address this request by providing an additional period of time for taxpayers to make an election, or revoke an election, under section 168(k)(5), (7), or (10) for property acquired after September 27, 2017, and placed in service during the taxpayer's taxable year that includes September 28, 2017.

IV. Special Rules

The August Proposed Regulations and these final regulations provide special rules similar to those in § 1.168(k)–1(f) 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 August Proposed Regulations and these final 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. In this situation, the August Proposed Regulations provide that 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.

In the fact pattern described in the preceding paragraph, a commenter requested clarification on whether the property is placed in service by the contributing partner prior to the section 721(a) transaction. Another commenter requested clarification on whether the contributing partner deducts the additional first year depreciation for the qualified property or the partnership allocates the additional first year depreciation deduction for the qualified property to the contributing partner. The final regulations provide that the contributing partner is deemed to place in service the qualified property prior to the section 721(a) transaction, and that the contributing partner deducts the entire additional first year depreciation for such property. The contributing partner will contribute the property to the partnership with a zero basis, and the contributed property will be section 704(c) property in the hands of the partnership.

Several commenters questioned how the August Proposed Regulations apply to a section 743(b) adjustment when there is a purchase of a partnership interest followed by a subsequent transfer of that partnership interest. Under the August Proposed Regulations, if qualified property is placed into service or planted or grafted, as applicable, and disposed of in the same taxable year, the additional first year depreciation deduction generally is not allowed. However, there is an exception to this rule in the case of nonrecognition transfers under section 168(i)(7). These rules in the August Proposed Regulations apply only to transfers of qualified property and not to section 743(b) adjustments resulting from transfers of partnership interests. Several commenters recommended that parallel rules should apply to transfers of partnership interests. The Treasury Department and the IRS agree with this comment.

These final regulations provide that, if a partnership interest is acquired and disposed of during the same taxable year, the additional first year depreciation deduction is not allowed for any section 743(b) adjustment arising from the initial acquisition. However, if a partnership interest is purchased and disposed of in a section 168(i)(7) transaction in the same taxable year, the section 743(b) adjustment is allowable, provided all of the requirements of section 168(k) are satisfied. The section 743(b) adjustment is apportioned between the purchaser/transferor and the transferee under the same rules that apply to transfers of qualified property.

A commenter requested a rule allowing dealerships that purchase replacement vehicles for use in their fleet of rental or leased vehicles to deduct the additional first year depreciation deduction in transactions that are similar to like-kind exchanges when at least 10 vehicles are traded in during the same taxable year. The treatment requested is similar to that given to like-kind exchanges under section 1031 as in effect before the enactment of the Act. The Treasury Department and the IRS decline to adopt this comment because it is outside the scope of these final regulations.

The Treasury Department and the IRS are aware that taxpayers and practitioners have questioned whether the unadjusted basis of qualified property for which the additional first year depreciation deduction is claimed is taken into account in determining whether the mid-quarter convention under section 168(d) and § 1.168(d)–1 applies for the taxable year. Consistent with the definition of depreciable basis in § 1.168(d)–1(b)(4), the basis is not reduced by the allowed or allowable additional first year depreciation deduction in determining whether the mid-quarter convention applies for the taxable year. Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 168(k) (REG–106808–19) that provide this proposed rule.

Statement of Availability of IRS Documents

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.*

Effective/Applicability Date

These final regulations 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 September 24, 2019. However, a taxpayer may choose to apply these final regulations, in their entirety, 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, provided the taxpayer consistently applies all rules in these final regulations. Additionally, a taxpayer may rely on the proposed regulations under section 168(k) in regulation project REG–104397–18 (2018–41 I.R.B. 558), 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, and ending before September 24, 2019.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including (i) potential economic, environmental, and public health and safety effects, (ii) potential distributive impacts, and (iii) equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

These regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) (MOA) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs has designated these regulations as economically significant under section 1(c) of the MOA. Accordingly, the OMB has reviewed these regulations.

A. Background

1. Bonus Depreciation Generally

In general, section 167 allows taxpayers to claim a ''reasonable allowance for the exhaustion, wear and tear'' of property used in a trade or business or held for the production of income. For most tangible property, the amount of the deduction is determined under section 168, which effectively provides schedules of deductions (as a share of the initial basis) for different types of assets. The baseline schedule generally provides for the deduction to be spread over a number of years.

In the Job Creation and Worker Assistance Act of 2002, Congress put in place section 168(k), creating what is colloquially known as ''bonus depreciation.'' Under this initial legislation, firms were allowed to take a deduction equal to 30 percent of the initial basis of qualified property in the year in which it was placed in service; the remaining 70 percent was depreciated according to the usual schedule. Broadly speaking, ''qualified property'' included personal property that had a class life of 20 years or less; additionally, the property was required to be ''new,'' meaning that the original use of the property must have commenced with the taxpayer in question. By shifting depreciation deductions forward in time, section 168(k) generally increased the present value of the depreciation deductions attributable to a given piece of property, increasing the incentive to invest in new property. Since 2001, Congress has changed the ''bonus percentage'' several times, in accordance with the following table, including the 2005–2007 period when bonus depreciation was not in effect for most property.

TABLE 1—PERCENT ADDITIONAL DEPRECIATION (FOR MOST QUALIFIED PROPERTY), BY DATE PLACED IN SERVICE

[Property placed in service]

Beginning date	End date	Bonus percentage
9/11/2001	5/4/2003	30
5/5/2003	12/31/2004	50
1/1/2005	12/31/2007	0
1/1/2008	9/8/2010	50
9/9/2010	12/31/2011	100
1/1/2012	12/31/2017	50

2. Bonus Depreciation Under the Act

The Act changed section 168(k) in several ways. First, the Act increased the bonus percentage. Under the pre-Act section 168(k), the bonus percentage for most property was 50 percent in 2017, 40 percent in 2018, 30 percent in 2019, and zero thereafter. The Act amended these percentages to 100 percent for most property placed in service between September 28, 2017 and the end of 2022, 80 percent in 2023, 60 percent in 2024, 40 percent in 2025, 20 percent in 2026, and 0 thereafter. The Act also removed the ''original use'' requirement, meaning that taxpayers could claim bonus depreciation on ''used'' property.

The Act made several other modest changes to the operation of section 168(k). First, it excluded from the definition of qualified property any property used by rate-regulated utilities and firms (primarily automobile dealerships) with ''floor plan financing indebtedness'' as defined under section 163(j). Similarly, section 168(g)(1)(G) provides that certain property used by real property and agricultural businesses that make an election to be excluded from the section 163(j) limitation are required to use the Alternative Depreciation System (ADS) for certain property which does not qualify for bonus depreciation. Furthermore, section 168(k)(2)(a)(ii)(IV) and (V) allowed qualified film, television, and live theatrical productions (as defined under section 181) to qualify for bonus depreciation.

3. Proposed and Final Regulations

The August Proposed Regulations and these final regulations create § 1.168(k)–2 which applies generally to property acquired and placed in service after September 27, 2017. The August Proposed Regulations and these final regulations largely draw upon language in existing § 1.168(k)–1, which generally continues to apply to property acquired or placed in service prior to September 27, 2017, with minor edits being made to conform to changes made by the Act. For provisions of section 168 that were generally unchanged by the Act, § 1.168(k)–2 predominantly follows § 1.168(k)–1 directly, with only minor changes. Additionally, § 1.168(k)–2 provides rules that clarify how the changes to section 168 made by the Act apply to property acquired after September 27, 2017.

In some instances the final regulations repeat unambiguous rules provided in the statute. However, there were a number of areas where clarification was necessary, and the analysis below focuses on these substantive portions of the regulation. These final regulations finalize certain provisions of the August Proposed Regulations with no change. In addition, these final regulations include provisions from the August Proposed Regulations that were modified to take into account comments received. The provisions discussed in this special analysis include (1) rules regarding film, television, and live theatrical performances, (2) clarifications regarding property depreciated under ADS for purposes other than section 168, (3) the eligibility of partnership basis adjustments under section 743(b) for bonus depreciation, (4) the treatment of tax-exempt use property, as defined by section 168(h)(6), (5) the definition of ''prior use'' for determining whether ''used'' property is eligible for bonus depreciation, and (6) clarifications regarding the date at which property is considered to be acquired in the case of self-constructed property.

B. No-Action Baseline

The Treasury Department and the IRS have assessed the benefits and costs of these final regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these final regulations.

C. Economic Analysis of Regulation

This section describes the main provisions of these final regulations, (including those finalized with no change from the August Proposed Regulations) and analyzes the economic effects of each one.

1. Film, Television, and Live Theatrical Performances

Sections 168(k)(2)(A)(i)(IV) and (V) provide that a qualified film or television production, or a qualified live theatrical production, is eligible for bonus depreciation, borrowing definitions from section 181. There was ambiguity in determining whether ''used'' film, television, and theatrical performances were eligible—*i.e.,* those properties whose production began under a different taxpayer. Following existing rules under section 181, these final regulations provide that direct production costs and acquisition costs are eligible for bonus depreciation in the hands of the owner, so long as the production was acquired before the initial date of release (or initial live staged performance). The Treasury Department and the IRS have determined that this is the proper interpretation of the statute, and that other statutory readings were not legally supportable. Nevertheless, this result provides a middle ground between two extreme positions: One in which only the initial owner was eligible for bonus depreciation, and one in which all acquisition costs of film, television, or live theatrical performances were eligible for section 168(k) under nearly all circumstances. Thus, the incentives for investment—and therefore the potential link to economic growth and efficiency—created by this interpretation are also in the middle of these two extremes. The Treasury Department and IRS expect that most taxpayers would have come to a similar interpretation of the treatment of used television, film, and theatrical performances in the absence of these final regulations. Therefore, the Treasury Department and IRS project that this clarification will have only small economic effects.

Additionally, while section 181 and the regulations thereunder provide a definition for when a film or television production is placed in service, they do not do so for live theatrical performances. The August Proposed Regulations and these final regulations provide such a definition for live theatrical performances, directly adapting the rules for film and television productions to live theatrical performances. Specifically, a live theatrical performance is considered placed in service when it begins commercial exhibition (*i.e.,* performances in front of paying audiences); an exhibition designed to attract further funding, or to determine whether the production should proceed, does not qualify as a commercial exhibition. This rule delays the placed in service date relative to the alternative choice (in which such an earlier exhibition would cause a live theatrical performance to be placed in service). This choice has two potential offsetting economic effects. First, this choice potentially delays the date in which the taxpayer could claim bonus depreciation for the performance, which could slightly reduce the incentive to invest in such a performance. Second, this choice increases the length of time over which a potential buyer could acquire the performance and remain eligible to claim bonus depreciation (since the acquisition of a production is only eligible until the date of its initial live staged performance); this could slightly increase the incentive to invest in such productions by increasing resale opportunities. The Treasury Department and the IRS project that these offsetting effects will have only small net effects on investment in live theatrical performances.

2. Depreciation Using ADS for Purposes Other Than Section 168

In general, property that is required to be depreciated under the ADS is not eligible for bonus depreciation. Additionally, some provisions of the code (such as sections 250(b)(2)(B) and 951A(d)(3)) require the use of ADS to determine aggregate basis for the purpose of that provision (but not for the purpose of calculating depreciation deductions under section 168). These final regulations clarifies that such a requirement does not cause a property to be ineligible for bonus depreciation. The Treasury Department and the IRS project that most taxpayers would have come to this interpretation in the absence of this final regulation, so this provision is likely to have modest economic effects. Nevertheless, this decision might give certainty to a small number of taxpayers that their property is, in fact, eligible for bonus depreciation despite interactions with other Code provisions, potentially creating a small incentive for additional investment.

3. Eligibility of Partnership Basis Adjustments Under Section 743(b)

Under the August Proposed Regulations, basis increases under section 743(b) (which generally occur when partnership interests are transferred) are generally eligible for bonus depreciation. These final regulations generally finalize this rule with only minor clarifications.

The effect of allowing a section 743(b) adjustment to be eligible for bonus depreciation can best be explained by the following example. Suppose taxpayers A and B contribute $100,000 each in cash to start Partnership X. Partnership X purchases a $150,000 piece of equipment Y (of a character that is eligible for bonus depreciation) and holds a $50,000 non-depreciable asset. After some number of years, the basis of Partnership X in Y (that is, the ''inside basis'' of Y in the hands of Partnership X) has been adjusted down to 0 through depreciation, but the fair market value (FMV) of Y is $60,000. Assume no other earnings of the partnership or fluctuations in asset FMV. At this point, total FMV of the assets held by Partnership X are $110,000, and A and B each have a $25,000 basis in their interest in Partnership X.

Suppose, at this point, that B sells her interest to C, an unrelated party, for $55,000 (equal to half of the FMV of the assets held by the partnership). As a result, C has basis of $55,000 in his interest in Partnership X, and B realizes a gain of $30,000 (equal to $55,000 minus her basis of $25,000). Under the usual rules of partnership taxation, this would cause a disconnect between C's outside basis—that is, the basis of C in Partnership X, which in this case is $55,000—and C's inside basis in the assets held by Partnership X, which in this case equals $25,000. This disconnect can produce undesired results, such as a certain gain being converted from capital to ordinary, or being taxed sooner than economically realized. Therefore, section 754 allows taxpayers to make certain adjustments, if elected. Assuming that a section 754 election is in place for Partnership X, section 743(b) causes the basis of Y to be increased by $30,000, equal to the gain recognized by B, and this basis adjustment would explicitly be assigned to C (meaning that any future cost recovery, through depreciation or otherwise, would be allocated to C). This causes C's inside basis and outside basis to come back into alignment, at $55,000 in this example.

Under section 168(k) prior to the Act, such section 743(b) adjustments were determined to be ineligible for bonus depreciation, since the tangible property acquired was, by construction, not ''new.'' Economically, this meant that the transfer of the partnership interest caused an immediate realization of gain by the seller, and a deferred realization of deduction items by the buyer. This created a modest incentive for sellers to hold onto their assets for longer periods of time, in order to defer tax payments. As has been well studied, this incentive can lead to portfolio misallocation, hindering the allocation of capital to its most efficient use. (This problem is often referred to as ''lock-in.'')

The Treasury Department and the IRS concluded that the Act's allowance of ''used'' property to qualify for bonus depreciation (subject to the other restrictions discussed in detail in the August Proposed Regulations and these final regulations) should extend to section 743(b) adjustments as well. This has the economic effect of mitigating the lock-in problem for transfers of certain partnership interests with built-in gains (to the extent that the section 743(b) adjustment is attributable to property that is of a character that qualifies for bonus depreciation). In the previous example discussed in this part I(C)(3) of this Special Analysis section, this would have the effect of allowing Partnership X to claim an immediate $30,000 deduction (which would be allocated to C) for its $30,000 section 743(b) adjustment. This $30,000 deduction precisely equals the $30,000 in gain realized by B. Therefore, the aggregate tax consequences faced by B and C cancel out, eliminating the lock-in effect in this simple example.

Reducing the lock-in effect for transfers of partnership interests can improve the efficiency of capital allocations throughout the economy. The Treasury Department and the IRS engaged in an analysis of the potential increase in output due to this potential increase in allocative efficiency. Based on projections regarding which partnerships will make adjustments under section 743(b) and assumptions about frictions to adjusting the capital stock, the Treasury Department and the IRS have concluded that the total economy-wide gain to output caused by this reduction in lock-in would be less than $5 million per year.

Relatedly, allowing section 743(b) adjustments to be eligible for bonus depreciation increases the incentive for a new partner to acquire an interest in a partnership from another partner, potentially increasing the value of the partnership slightly. This can have the effect of making a previous investment in tangible property more attractive, which has an effect similar to a small reduction in the cost of capital for such partnerships. Based on an analysis of tax data, and applying estimates of the elasticity of capital with respect to the cost of capital, the Treasury Department and the IRS project that this effect will increase investment by no more than $20 million in any year, with smaller effects in most years.

4. Property Owned by Partnerships Treated as Tax-Exempt Use Property

Section 168(h)(6) provides that property held by a partnership in which one partner is a tax-exempt entity and another partner is not is ''tax-exempt use property.'' Section 168(g)(1)(B) requires tax-exempt use property to be depreciated according to the ADS, which renders tax-exempt use property ineligible for bonus depreciation. These final regulations clarify that only the tax-exempt entity's proportional share of the property is ineligible for bonus depreciation, which is consistent with other rules in the August Proposed Regulations and these final regulations providing that partners have a depreciable interest in only their proportionate share of assets held by a partnership. Relative to an interpretation defining all property held by such a partnership with a tax-exempt partner to be ineligible, this provision will generally have the effect of increasing the amount of property eligible for bonus depreciation, which will slightly increase the incentive for such partnerships to invest in physical capital.

Based on entities filing Form 990 (for certain tax-exempt entities) and Form 5500 (for certain pension plans), the Treasury Department and the IRS have determined that there were approximately 100,000 partnerships in 2015 (out of nearly 4 million partnerships total) that were owned directly by at least one tax-exempt partner and at least one taxable partner. This figure could potentially be an underestimate, as it will not count partnerships that have a common structure in which the tax-exempt partner owns the partnership through a ''blocker'' C corporation (which could be treated tax-exempt under the rules of section 168(h)(6)(F)). Furthermore, this estimate does not take account of multi-tiered partnership structures. On the other hand, not all such partnerships would make depreciable investments that are affected by this final regulation.

5. New and Used Property

In order for a property to be eligible for bonus depreciation, it must generally satisfy one of two conditions: (1) The original use of the property begins with the taxpayer, or (2) ''such property was not used by the taxpayer at any time prior to such acquisition'' (section 168(k)(2)(E)(ii)(I)). Neither the August Proposed Regulations nor these final regulations make any substantial changes to the ''original use'' rules in § 1.168(k)–1(b)(3). However, clarification was needed regarding the determination of whether ''such property was . . . used by the taxpayer . . . prior to such acquisition''. One common circumstance in which this could be ambiguous is when a lessee uses (but does not own) a piece of property and then purchases that property upon the expiration of the lease. These final regulations follow the intent of Congress (as indicated by the Joint Committee on Taxation, General Explanation of Public Law 115–97 (JCS–1–18) at 125 fn. 542 (Dec. 20, 2018)) to define ''used'' as meaning that the taxpayer previously held a ''depreciable interest'' in the property. In general, this would allow the former lessee in such an example to claim bonus depreciation upon the subsequent purchase of the property in question (assuming all other requirements are met).

These final regulations make several additional clarifications regarding what is meant by ''prior depreciable interest.'' First, these final regulations provide that a taxpayer will be considered to have had a prior depreciable interest in a piece of property if his/her predecessor had such a prior depreciable interest; likewise, these final regulations provide a definition of ''predecessor,'' as requested by commenters. Second, these final regulations provide a safe harbor look-back period of five calendar years for determining whether a taxpayer had a prior depreciable interest. The Treasury Department and the IRS chose a five-year period because the vast majority of bonus-eligible assets have General Depreciation Schedule (GDS) lives of 5 years or more (3-year property is uncommon), and thus taxpayers will tend to have readily accessible records for these assets.

These rules will help ease administrative and compliance burdens: Taxpayers will be able to more clearly identify their predecessors, if any, and the limited look-back period will mitigate the infeasibility of the implicit infinite lookback period some might interpret as a requirement of the statute. Both of these rules should help provide clarity and help reassure taxpayers that they will not accidentally run afoul of the prior depreciable interest rules, potentially encouraging more firms to take advantage of the investment incentives created by section 168(k).

Third, these final regulations provide that ''substantially renovated property'' can be eligible for bonus depreciation, even if the taxpayer had a prior depreciable interest in the property prior to the renovation. For this purpose, a property is a ''substantially renovated property'' if the cost of the used parts is less than or equal to 20 percent of the total cost of the (post-renovation) property, whether acquired or self-constructed. The Treasury Department and the IRS project that this provision will have limited economic effects, as it will come into play only in the relatively rare circumstance in which a taxpayer is purchasing substantially renovated property and held a prior depreciable interest in the pre-renovation property. Nevertheless, this provision will generally increase the amount of property eligible for bonus depreciation, increasing the incentive to invest.

6. Date of Acquisition

The Act provides that property must be acquired by the taxpayer after September 27, 2017, or acquired by the taxpayer pursuant to a ''written binding contract'' entered into after September 27, 2017, in order for the property to be eligible for the 100 percent bonus depreciation rate. There was some ambiguity regarding whether third-party constructed property—that is, property that is produced for the taxpayer by a third party under a written binding contract—is acquired ''pursuant to a written binding contract'' or whether it is considered self-constructed property. The August Proposed Regulations reflected the interpretation that third party constructed property is not self-constructed property and the contract for such property must have been entered into after September 27, 2017, in order to be eligible for 100 percent bonus depreciation. However, the final regulations under § 1.168(k)–1 took a different interpretation, such that the acquisition date of all self-constructed property (including third party constructed property) is equal to the (usually later) date when substantial construction begins.

These final regulations provide for the latter interpretation: Third-party constructed property is treated as self-constructed property, meaning that more taxpayers will be eligible for 100 percent bonus depreciation for property where contracts were entered into prior to September 27, 2017, but for which substantial construction began after that date. Given that this provision affects only investment that has already been made, the Treasury Department and the IRS expect it to have virtually no effect on economic growth or efficiency going forward, except to the extent that it changes taxpayers' expectations about future policy.

II. Paperwork Reduction Act

These final regulations do not impose any additional information collection requirements in the form of reporting, recordkeeping requirements, or third-party disclosure requirements. However, taxpayers that want to make or revoke the election under section 168(k)(5), (7), or (10), are required to attach a statement to their Federal tax returns pursuant to the instructions for Form 4562, ''Depreciation and Amortization (Including Information on Listed Property)''. Also, pursuant to Rev. Proc. 2019–33 (2019–34 I.R.B. 662), taxpayers may make or revoke the election under section 168(k)(5), (7), or (10) by filing, within a specified time period, amended Federal tax returns, or Form 3115, ''Application for Change in Accounting Method,'' with their Federal tax returns and submit a copy of the Form 3115 to the IRS office in Ogden, Utah.

For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA), the reporting burden associated with these collections of information will be reflected in the PRA submission associated with income tax returns in the Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series (see chart at the end of this part II for OMB control numbers). The estimate for the number of impacted filers with respect to the collection of information described in this part is 0 to 141,550 respondents. Historical data was not available to directly estimate the number of impacted filers. This estimate assumes that no more than 5 percent of income tax return filers with a Form 4562 and relevant activity on lines 14 and/or 19(a–f) will make these elections, due to the limited scope of the elections. The IRS estimates the number of affected filers to be the following:

TAX FORMS IMPACTED

Collection of information	Number of respondents (estimated)	Forms to which the information may be attached
Section 1.168(k)–2(f)(1) Election not to deduct additional first year depreciation.	0–41,685	Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series.

TAX FORMS IMPACTED—Continued

Collection of information	Number of respondents (estimated)	Forms to which the information may be attached
Section 1.168(k)–2(f)(2) Election to apply section 168(k)(5) for specified plants.	0–790	Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series.
Section 1.168(k)–2(f)(3) Election for qualified property placed in service during the 2017 taxable year.	0–90,275	Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series.
Section 1.168(k)–2(f)(5)(ii) (Revocation of election—Automatic 6-month extension) and § 1.168(k)–2(f)(6) (Special rules for 2016 and 2017 returns).	0–8,800	Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series.

Source: IRS:RAAS:KDA (CDW 6–1–19).

If the time under Rev. Proc. 2019–33 for filing amended returns or Form 3115 has expired to revoke the election under section 168(k)(5), (7), or (10), taxpayers then are required to submit a request for a private letter ruling to revoke such election in accordance with Rev. Proc. 2019–1 (2019–1 I.R.B. 1) (or its successors). For purposes of the PRA, the reporting burden associated with these collections of information will be reflected in the PRA submission associated with income tax returns in the Form 1120 series and Form 1065 series (see chart at the end of this part II for OMB control numbers). The estimate for the number of impacted filers with respect to the collection of information described in this part is 0 to 10 respondents. This estimate is based on the number of private letter ruling requests filed by taxpayers from 2005 through 2018 to revoke elections under section 168(k). The IRS estimates the number of affected filers to be the following:

TAX FORMS IMPACTED

Collection of information	Number of respondents (estimated)	Forms to which the information may be attached
Section 1.168(k)–2(f)(5)(i) Revocation of election	0–10	Form 1120 series and Form 1065 series.

Source: IRS:CC:ITA (CASE–MIS 5–21–19).

The current status of the PRA submissions related to the tax forms and the revenue procedure that will be revised as a result of the information collections in these final regulations is provided in the accompanying table. As described above, the reporting burdens associated with the information collections in the regulations are included in the aggregated burden estimates for OMB control numbers 1545–0123 (which represents a total estimated burden time for all forms and schedules for corporations of 3.157 billion hours and total estimated monetized costs of $58.148 billion ($2017)), 1545–0074 (which represents a total estimated burden time, including all other related forms and schedules for individuals, of 1.784 billion hours and total estimated monetized costs of $31.764 billion ($2017)), and 1545–0092 (which represents a total estimated burden time, including all other related forms and schedules for trusts and estates, of 307,844,800 hours and total estimated monetized costs of $9.950 billion ($2016)).

The overall burden estimates provided in the preceding paragraph for the OMB control numbers below are aggregate amounts that relate to the entire package of forms or revenue procedure, as applicable, associated with the applicable OMB control number and will in the future include, but not isolate, the estimated burden of the tax forms or the revenue procedure, as applicable, that will be created or revised as a result of the information collections in the regulations. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by the regulations. These burdens have been reported for other regulations that rely on the same OMB control numbers to conduct information collections under the PRA, and the Treasury Department and the IRS urge readers to recognize that these numbers are duplicates and to guard against over counting the burden that the regulations that cite these OMB control numbers imposed prior to the Act. No burden estimates specific to the forms affected by the regulations are currently available. The Treasury Department and the IRS have not estimated the burden, including that of any new information collections, related to the requirements under the regulations. For the OMB control numbers discussed in the preceding paragraphs, the Treasury Department and the IRS estimate PRA burdens on a taxpayer-type basis rather than a provision-specific basis. Those estimates would capture both changes made by the Act and those that arise out of discretionary authority exercised in these final regulations and other regulations that affect the compliance burden for those forms.

The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form or revenue procedure, as applicable, and ways for the IRS to minimize the paperwork burden. In addition, when available, drafts of IRS forms are posted for comment at *https://apps.irs.gov/app/picklist/list/draftTaxForms.htm.* IRS forms are available at *https://www.irs.gov/forms-instructions.* Forms will not be finalized until after they have been approved by OMB under the PRA.

Form	Type of filer	OMB No.(s)	Status
Form 1040	Individual (NEW Model).	1545–0074	Published in the **Federal Register** on 7/20/18. Public Comment period closed on 9/18/18.
	Link: *https://www.federalregister.gov/documents/2018/07/20/2018-15627/proposed-collection-comment-request-for-regulation-project*		
Form 1041	Trusts and estates	1545–0092	Published in the **Federal Register** on 4/4/18. Public Comment period closed on 6/4/18.
	Link: *https://www.federalregister.gov/documents/2018/04/04/2018-06892/proposed-collection-comment-request-for-form-1041*		
Forms 1065 and 1120	Business (NEW Model).	1545–0123	Published in the **Federal Register** on 10/8/18. Public Comment period closed on 12/10/18.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd*		
Form 3115	All other Filers (mainly trusts and estates) (Legacy system).	1545–2070	Published in the **Federal Register** on 2/15/17 by IRS. Public Comment period closed on 4/17/17.
	Link: *https://www.federalregister.gov/documents/2017/02/15/2017-02985/proposed-information-collection-comment-request*		
	Business (NEW Model).	1545–0123	Published in the **Federal Register** on 10/8/18. Public Comment period closed on 12/10/18.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd*		
	Individual (NEW Model).	1545–0074	Published in the **Federal Register** on 7/20/18. Public Comment period closed on 9/18/18.
	Link: *https://www.federalregister.gov/documents/2018/07/20/2018-15627/proposed-collection-comment-request-for-regulation-project*		
Revenue Procedure 2019–1 (previously 2018–1).	Business (NEW Model).	1545–0123	Published in the **Federal Register** on 10/8/18. Public Comment period closed on 12/10/18.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd*		

III. Regulatory Flexibility Act

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Section 168(k) generally affects taxpayers that own and use depreciable property in their trades or businesses or for their production of income. The reporting burdens in § 1.168(k)–2(f)(1), (2), and (3), (f)(5)(i) and (ii), and (f)(6) generally affect taxpayers that elect to make or revoke certain elections under section 168(k). For purposes of the PRA, the Treasury Department and the IRS estimate that there are 0 to 141,550 respondents of all sizes that are likely to be impacted by these collections of information. Most of these filers are likely to be small entities (business entities with gross receipts of $25 million or less pursuant to section 448(c)(1)). The Treasury Department and the IRS estimate the number of filers affected by § 1.168(k)–2(f)(1), (2), and (3), (f)(5)(i) and (ii), and (f)(6) to be the following:

Form	Gross receipts of $25 million or less	Gross receipts over $25 million
Form 1040	0–59,000 Respondents (estimated)	0–70 Respondents (estimated).
Form 1065	0–30,125 Respondents (estimated)	0–935 Respondents (estimated).
Form 1120	0–11,400 Respondents (estimated)	0–1,560 Respondents (estimated).
Form 1120S	0–35,900 Respondents (estimated)	0–2,560 Respondents (estimated).
Total	0–136,425 Respondents (estimated)	0–5,125 Respondents (estimated).

Source: IRS:RAAS:KDA (CDW 6–1–19).

Regardless of the number of small entities potentially affected by these final regulations, the Treasury Department and the IRS have concluded that § 1.168(k)–2(f)(1), (2), and (3), (f)(5)(i) and (ii), and (f)(6) will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that: (1) Many small businesses are not required to capitalize under section 263(a) the amount paid or incurred for the acquisition of depreciable tangible property that costs $5,000 or less if the business has an applicable financial statement or costs $500 or less if the business does not have an applicable financial statement, pursuant to § 1.263(a)–1(f)(1); (2) many small businesses are no longer required to capitalize under section 263A the costs to construct, build, manufacture, install, improve, raise, or grow depreciable property if their average annual gross receipts are $25,000,000 or less; and (3) a small business that capitalizes costs of depreciable tangible property may deduct under section 179 up to $1,020,000 (2019 inflation adjusted amount) of the cost of such property placed in service during the taxable year if the total cost of depreciable tangible property placed in service during the taxable year does not exceed $2,550,000 (2019 inflation adjusted amount). Further, § 1.168(k)–2(f)(1), (2), and (3), (f)(5)(i) and (ii), and (f)(6) apply only if the taxpayer chooses to make an election or revoke an election under section 168(k). Finally, no comments regarding the economic impact of these regulations on small entities were received. Consequently, the Treasury Department and the IRS hereby certify that these final regulations will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, the proposed rule preceding this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. These final regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

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

VI. Congressional Review Act

The Administrator of the Office of Information and Regulatory Affairs of the OMB has determined that this Treasury decision is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*) (''CRA''). Under section 801(3) of the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. Notwithstanding this requirement, section 808(2) of the CRA allows agencies to dispense with the requirements of section 801 of the CRA when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and that the rule shall take effect at such time as the agency promulgating the rule determines.

Pursuant to section 808(2) of the CRA, the Treasury Department and the IRS find, for good cause, that a 60-day delay in the effective date is unnecessary and contrary to the public interest. The statutory provisions to which these rules relate were enacted on December 22, 2017 and apply to property acquired and placed in service after September 27, 2017. In most cases, two taxable years in which such property may have been placed in service have ended. This means that the statutory provisions are currently effective, and taxpayers may be subject to Federal income tax liability for their 2017 or 2018 taxable years reflecting these provisions. In many cases, taxpayers may be required to file returns reflecting this Federal income liability during the 60-day period that begins after this rule is published in the **Federal Register**.

These final regulations provide crucial guidance for taxpayers on how to apply the relevant statutory rules, compute their tax liability and accurately file their Federal income tax returns. These final regulations resolve statutory ambiguity, prevent abuse and grant taxpayer relief that would not be available based solely on the statute. Because taxpayers must already comply with the statute, a 60-day delay in the effective date of the final regulations is unnecessary and contrary to the public interest. A delay would place certain taxpayers in the unusual position of having to determine whether to file tax returns during the pre-effective date period based on final regulations that are not yet effective. If taxpayers chose not to follow the final regulations and did not amend their returns after the regulations became effective, it would place significant strain on the IRS to ensure that taxpayers correctly calculated their tax liabilities. For example, in cases where taxpayers self-construct property, a delayed effective date may hamper the IRS' ability to determine if such property was acquired after September 27, 2017. Moreover, a delayed effective date could create uncertainty and possible restatements with respect to financial statement audits. Therefore, the rules in this Treasury decision are effective on the date of publication in the **Federal Register** and taxpayers may apply these rules to qualified property acquired and placed in service after September 27, 2017 in a taxable year ending on or after September 28, 2017.

The foregoing good cause statement only applies to the 60-day delayed effective date provision of section 801(3) of the CRA and is permitted under section 808(2) of the CRA. The Treasury Department and the IRS hereby comply with all aspects of the CRA and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

Drafting Information

The principal authors of these final 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.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

■ **Par. 2.** Section 1.48–12 is amended:
■ 1. In the last sentence in paragraph (a)(2)(i), by removing ''The last sentence'' and adding ''The next to last sentence'' in its place;
■ 2. By adding three sentences at the end of paragraph (a)(2)(i); and
■ 3. By 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 September 24, 2019. However, a taxpayer may choose to apply the last sentence in paragraph (c)(8)(i) of this section 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. A taxpayer may rely on the last sentence in paragraph (c)(8)(i) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) 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 September 24, 2019.

* * * * *

(c) * * *

(8) * * *

(i) * * * Further, see § 1.168(k)–2(g)(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:

■ 1. In the third sentence in paragraph (b)(1), by 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), by removing ''and before 2010''; and

■ 3. By adding three sentences at the end of paragraph (e)(3).

The additions read 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 September 24, 2019. However, a taxpayer may choose to apply the language ''or § 1.168(k)–2, as applicable,'' in the third sentence in paragraph (b)(1) of this section 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. 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 regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) 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 September 24, 2019.

■ Par. 4. Section 1.168(b)–1 is amended:

■ 1. In the second sentence in paragraph (a)(3), by removing ''under section 179, section 179C, or any similar provision,'' and adding ''under section 179, section 179C, section 181, or any similar provision,'' in its place;

■ 2. By adding paragraph (a)(5); and

■ 3. By revising paragraph (b).

The addition and revision 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) *Applicability 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 and addition of* ''*section 181*'' *in paragraph (a)(3) of this section*—(i) *In general.* Except as provided in paragraphs (b)(2)(ii) and (iii) of this section, paragraph (a)(5) of this section and the language ''section 181,'' in the second sentence in paragraph (a)(3) of this section are applicable on or after September 24, 2019.

(ii) *Early application of paragraph (a)(5) of this section and addition of* ''*section 181*'' *in paragraph (a)(3) of this section.* A taxpayer may choose to apply paragraph (a)(5) of this section and the language ''section 181,'' in the second sentence in paragraph (a)(3) of this section for the taxpayer's taxable years ending on or after September 28, 2017.

(iii) *Early application of regulation project REG–104397–18.* A taxpayer may rely on the provisions of paragraph (a)(5) of this section in regulation project REG–104397–18 (2018–41 I.R.B 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for the taxpayer's taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes September 24, 2019.

■ **Par. 5.** Section 1.168(d)–1 is amended by adding a sentence at the end of paragraphs (b)(3)(ii) and (b)(7)(ii) and adding three sentences at the end of paragraph (d)(2) to read as follows:

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

* * * * *

(b) * * *

(3) * * *

(ii) * * * Further, see § 1.168(k)–2(g)(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(g)(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 September 24, 2019. However, a taxpayer may choose to apply the last sentences in paragraphs (b)(3)(ii) and (b)(7)(ii) of this section to 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. A taxpayer may rely on the last sentences in paragraphs (b)(3)(ii) and (b)(7)(ii) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) 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 September 24, 2019.

* * * * *

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

■ 1. In the penultimate sentence in paragraph (b)(1), by 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(g)(6)(iii), as applicable, and § 1.1400L(b)–1(f)(6)'' in its place;

■ 2. In the fifth sentence in paragraph (c), by 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(g)(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), by 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(g)(6)(iv), as applicable, and § 1.400L(b)–1(f)(6)'' in its place;

■ 4. In the last sentence in paragraph (d)(4)(i), by 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(g)(6)(iv), as applicable, and § 1.400L(b)–1(f)(6)'' in its place;

■ 5. By revising the first sentence in paragraph (g)(1); and

■ 6. By redesignating paragraph (g)(2) as paragraph (g)(3) and adding new paragraph (g)(2).

The revision and addition 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*—(i) *In general.* The language ''or § 1.168(k)–2(g)(6)(iii), as applicable'' in paragraph (b)(1) of this section, the language ''or § 1.168(k)–2(g)(6)(ii), as applicable'' in paragraph (c) of this section, and the language ''or § 1.168(k)–2(g)(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 September 24, 2019.

(ii) *Early application.* A taxpayer may choose to apply the language ''or § 1.168(k)–2(g)(6)(iii), as applicable'' in paragraph (b)(1) of this section, the language ''or § 1.168(k)–2(g)(6)(ii), as applicable'' in paragraph (c) of this section, and the language ''or § 1.168(k)–2(g)(6)(iv), as applicable'' in paragraphs (d)(3)(i)(C) and (d)(4)(i) of this section 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.

(iii) *Early application of regulation project REG–104397–18.* 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 regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) 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 September 24, 2019.

* * * * *

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

■ 1. In paragraph (d)(3)(ii)(B), by 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(g)(5), or § 1.1400L(b)–1(f)(5)'' in its place;

■ 2. In paragraph (d)(3)(ii)(E), by 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(g)(5), or § 1.1400L(b)–1(f)(5)'' in its place;

■ 3. By adding a sentence at the end of paragraph (d)(4);

■ 4. By adding a sentence at the end of paragraph (h);

■ 5. By revising paragraph (k)(1); and

■ 6. By adding paragraph (k)(4).

The additions and revision read as follows:

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

* * * * *

(d) * * *

(4) * * * Further, see § 1.168(k)–2(g)(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(g)(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) * * *

(1) *In general.* Except as provided in paragraphs (k)(3) and (4) of this section, this section applies to a like-kind exchange or an involuntary conversion of MACRS property for which the time of disposition and the time of replacement both occur after February 27, 2004.

* * * * *

(4) *Qualified property under section 168(k) acquired and placed in service after September 27, 2017*—(i) *In general.* The language ''1.168(k)–2(g)(5),'' in paragraphs (d)(3)(ii)(B) and (E) of this section and the final sentence 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 September 24, 2019.

(ii) *Early application.* A taxpayer may choose to apply the language ''1.168(k)–2(g)(5),'' in paragraphs (d)(3)(ii)(B) and (E) of this section and the final sentence in paragraphs (d)(4) and (h) of this section 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 September 28, 2017.

(iii) *Early application of regulation project REG–104397–18.* 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 final sentence in paragraphs (d)(4) and (h) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(*b*) of this chapter) 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 September 24, 2019.

■ **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.

(i) In general.
(ii) Example.
(10) Coordination with section 514(a)(3).
(11) [Reserved]
(h) Applicability dates.
(1) In general.
(2) Early application of this section.
(3) Early application of regulation project REG–104397–18.

■ **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));

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

(iii) *Initial live staged performance* is 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; and

(iv) *Predecessor* includes—

(A) A transferor of an asset to a transferee in a transaction to which section 381(a) applies;

(B) A transferor of an asset to a transferee in a transaction in which the transferee's basis in the asset is determined, in whole or in part, by reference to the basis of the asset in the hands of the transferor;

(C) A partnership that is considered as continuing under section 708(b)(2) and § 1.708–1;

(D) The decedent in the case of an asset acquired by the estate; or

(E) A transferor of an asset to a trust.

(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 § 1.167(a)–14;

(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) A 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 and §§ 1.181–1 through 1.181–6 without regard to section 181(a)(2) and (g), § 1.181–1(b)(1)(i) and (ii), and (b)(2)(i), or section 168(k). Only production costs of a qualified film or television production are allowable as a deduction under section 181 and §§ 1.181–1 through 1.181–6 without regard, for purposes of section 168(k), to section 181(a)(2) and (g), § 1.181–1(b)(1)(i) and (ii), and (b)(2)(i). The taxpayer that claims the additional first year depreciation deduction under this section for the production costs of a qualified film or television production must be the owner, as defined in § 1.181–1(a)(2), of the qualified film or television production. See § 1.181–1(a)(3) for the definition of production costs;

(F) A qualified live theatrical production, as defined in section 181(e), for which a deduction would have been allowable under section 181 and §§ 1.181–1 through 1.181–6 without regard to section 181(a)(2) and (g), § 1.181–1(b)(1)(i) and (ii), and (b)(2)(i), or section 168(k). Only production costs of a qualified live theatrical production are allowable as a deduction under section 181 and §§ 1.181–1 through 1.181–6 without regard, for purposes of section 168(k), to section 181(a)(2) and (g), § 1.181–1(b)(1)(i) and (ii), and (b)(2)(i). The taxpayer that claims the additional first year depreciation deduction under this section for the production costs of a qualified live theatrical production must be the owner, as defined in § 1.181–1(a)(2), of the qualified live theatrical production. In applying § 1.181–1(a)(2)(ii) to a person that acquires a finished or partially-finished qualified live theatrical production, such person is treated as an owner of that production, but only if the production is acquired prior to its initial live staged performance. Rules similar to the rules in § 1.181–1(a)(3) for the definition of production costs of a qualified film or television production apply for defining production costs of a qualified live theatrical production; 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 (f) 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)). If section 168(h)(6) applies to the property, only the tax-exempt entity's proportionate share of the property, as determined under section 168(h)(6), is treated as tax-exempt use property described in section 168(g)(1)(B) and in this paragraph (b)(2)(ii)(B). This paragraph (b)(2)(ii)(B) does not apply to property for which the adjusted basis is required to be determined using the alternative depreciation system of section 168(g) pursuant to section 250(b)(2)(B) or 951A(d)(3), as applicable, or to property for which the adjusted basis is required to be determined using the alternative depreciation system of section 168(g) for allocating business interest expense between excepted and non-excepted trades or businesses under section 163(j), but only if the property is not 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 Code, other than section 163(j), 250(b)(2)(B), or 951A(d)(3), as applicable;

(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 (f) 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 by the taxpayer in any taxable year beginning before January 1, 2018;

(F) Primarily used in a trade or business described in section 163(j)(7)(A)(iv), and placed in service by the taxpayer in any taxable year beginning after December 31, 2017; or

(G) 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, as defined in section 163(j)(9), related to such indebtedness is taken into account under section 163(j)(1)(C) for the taxable year. Such property also must be placed in service by the taxpayer in any taxable year beginning after December 31, 2017.

(iii) *Examples.* The application of this paragraph (b)(2) 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 are not described in section 163(j)(3):

(A) *Example 1.* On February 8, 2018, *A* finishes the production of a qualified film, as defined in § 1.181–3. On June 4, 2018, *B* acquires this finished production from *A.* The initial release or broadcast, as defined in § 1.181–1(a)(7), of this qualified film is on July 28, 2018. Because *B* acquired the qualified film before its initial release or broadcast, *B* is treated as the owner of the qualified film for purposes of section 181 and § 1.181–1(a)(2). Assuming all other requirements of this section are met and all requirements of section 181 and §§ 1.181–1 through 1.181–6, other than section 181(a)(2) and (g), and § 1.181–1(b)(1)(i) and (ii), and (b)(2)(i), are met, *B's* acquisition cost of the qualified film qualifies for the additional first year depreciation deduction under this section.

(B) *Example 2.* The facts are the same as in *Example 1* of paragraph (b)(2)(iii)(A) of this section, except that *B* acquires a limited license or right to release the qualified film in Europe. As a result, *B* is not treated as the owner of the qualified film pursuant to § 1.181–1(a)(2). Accordingly, paragraph (b)(2)(i)(E) of this section is not satisfied, and *B's* acquisition cost of the license or right does not qualify for the additional first year depreciation deduction.

(C) *Example 3. C* owns a film library. All of the films in this film library are completed and have been released or broadcasted. In 2018, *D* buys this film library from *C.* Because *D* acquired the films after their initial release or broadcast, *D's* acquisition cost of the film library does not qualify for a deduction under section 181. As a result, paragraph (b)(2)(i)(E) of this section is not satisfied, and *D's* acquisition cost of the film library does not qualify for the additional first year depreciation deduction.

(D) *Example 4.* During 2019, E Corporation, a domestic corporation, acquired new equipment for use in its manufacturing trade or business in Mexico. To determine its qualified business asset investment for purposes of section 250, E Corporation must determine the adjusted basis of the new equipment using the alternative depreciation system of section 168(g) pursuant to sections 250(b)(2)(B) and 951A(d)(3). E Corporation also is required to depreciate the new equipment under the alternative depreciation system of section 168(g) pursuant to section 168(g)(1)(A). As a result, the new equipment does not qualify for the additional first year depreciation deduction pursuant to paragraph (b)(2)(ii)(B) of this section.

(E) *Example 5.* The facts are the same as in *Example 4* of paragraph (b)(2)(iii)(D) of this section, except E Corporation acquired the new equipment for use in its manufacturing trade or business in California. The new equipment is not described in section 168(g)(1)(A), (B), (C), (D), (F), or (G). No other provision of the Internal Revenue Code, other than section 250(b)(2)(B) or 951A(d)(3), requires the new equipment to be depreciated using the alternative depreciation system of section 168(g). To determine its qualified business asset investment for purposes of section 250, E Corporation must determine the adjusted basis of the new equipment using the alternative depreciation system of section 168(g) pursuant to sections 250(b)(2)(B) and 951A(d)(3). Because E Corporation is not required to depreciate the new equipment under the alternative depreciation system of section 168(g), paragraph (b)(2)(ii)(B) of this section does not apply to this new equipment. Assuming all other requirements are met, the new equipment qualifies for the additional first year depreciation deduction under this section.

(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 paid or 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) and § 1.267(b)–1, or section 707(b) and § 1.707–1.

(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 (g)(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. To determine if the taxpayer or a predecessor had a depreciable interest in the property at any time prior to acquisition, only the five calendar years immediately prior to the taxpayer's current placed-in-service year of the property is taken into account. If the taxpayer and a predecessor have not been in existence for this entire five-year period, only the number of calendar years the taxpayer and the predecessor have been in existence is taken into account. 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 under paragraphs (b)(3)(iii)(A)(*1*) and (b)(3)(iii)(B)(*1*) of this section. 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*) *Substantial renovation of property.* If a taxpayer acquires and places in service substantially renovated property and the taxpayer or a predecessor previously had a depreciable interest in the property before it was substantially renovated, the taxpayer's or predecessor's depreciable interest in the property before it was substantially renovated is not taken into account for determining whether the substantially renovated property was used by the taxpayer or a predecessor at any time prior to its acquisition by the taxpayer under paragraphs (b)(3)(iii)(A)(*1*) and (b)(3)(iii)(B)(*1*) of this section. For purposes of this paragraph (b)(3)(iii)(B)(*3*), property is substantially renovated if the cost of the used parts is not more than 20 percent of the total cost of the substantially renovated property, whether acquired or self-constructed.

(C) [Reserved]

(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 § 1.755–1; 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) [Reserved]

(vi) *Syndication transaction.* If new property is acquired and placed in service by a lessor, or if used property is acquired and placed in service by a lessor and the lessor or a predecessor did not previously have a depreciable interest in the used 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. The purchaser of the property in the last sale during the three-month period is treated, for purposes of applying paragraph (b)(3) of this section, as—

(A) The original user of the property in this transaction if the lessor acquired and placed in service new property; or

(B) The taxpayer having the depreciable interest in the property in this transaction if the lessor acquired and placed in service used property.

(vii) *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:

(A) *Example 1.* (*1*) 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.

(*2*) *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 under this section.

(*3*) *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 under this section. 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 under this section, regardless of whether the $5,000 is added to the basis of the machine or is capitalized as a separate asset.

(B) *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* under this section, subject to any limitation under section 280F.

(C) *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* under this section.

(D) *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 under this section and *I*'s purchase price for its 3⁄8 fractional interest in the aircraft qualifies for the additional first year depreciation deduction under this section.

(E) *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 additional first year depreciation deduction under this section because *J* acquired the tractors before September 28, 2017.

(F) *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* under this section.

(G) *Example 7.* The facts are the same as in *Example 6* of paragraph (b)(3)(vii)(F) of this section, 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.*

(H) *Example 8.* The facts are the same as in *Example 6* of paragraph (b)(3)(vii)(F) of this section, 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 additional first year depreciation deduction for *L* under this section.

(I) *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* under this section.

(J) *Example 10.* The facts are the same as in *Example 9* of paragraph (b)(3)(vii)(I) of this section, except *N* had a 100-percent depreciable interest in the equipment during 2011 through 2015, and *M* purchased from *N* a 50-percent interest in the equipment during 2016. Pursuant to paragraph (b)(3)(iii)(B)(*1*) of this section, the lookback period is 2013 through 2017 to determine if *N* had a depreciable interest in *M*'s 50-percent interest in the equipment *N* acquired from *M* in 2018. Because *N* had a 100-percent depreciable interest in the equipment during 2013 through 2015, *N* had a depreciable interest in *M*'s 50-percent interest in the equipment during the lookback period. 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.*

(K) *Example 11.* The facts are the same as in *Example 9* of paragraph (b)(3)(vii)(I) of this section, except *N* had a 100-percent depreciable interest in the equipment only during 2011, and *M* purchased from *N* a 50-percent interest in the equipment during 2012. Pursuant to paragraph (b)(3)(iii)(B)(*1*) of this section, the lookback period is 2013 through 2017 to determine if *N* had a depreciable interest in *M*'s 50-percent interest in the equipment *N* acquired from *M* in 2018. Because *N* had a depreciable interest in only its 50-percent interest in the equipment during this lookback period, *N*'s acquisition of *M*'s interest in the equipment during 2018 satisfies the used property acquisition requirements of paragraphs (b)(3)(iii)(A)(*1*) and (b)(3)(iii)(B)(*1*) of this section. Assuming all other requirements are met, *N*'s purchase price of *M*'s interest in the equipment during 2018 qualifies for the additional first year depreciation deduction for *N* under this section.

(L) *Example 12.* The facts are the same as in *Example 9* of paragraph (b)(3)(vii)(I) of this section, 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.

(M) *Example 13. 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.

(N) *Example 14. 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 its 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 under this section.

(O) *Example 15.* The facts are the same as in *Example 14* of paragraph (b)(3)(vii)(N) of this section, 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.

(P) *Example 16.* The facts are the same as in *Example 14* of paragraph (b)(3)(vii)(N) of this section, 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.

(Q) *Example 17.* The facts are the same as in *Example 14* of paragraph (b)(3)(vii)(N) of this section, 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.

(R) *Example 18.* (*1*) *W,* a freight transportation company, acquires and places in service a used aircraft during 2019 (Airplane #1). Prior to this acquisition, *W* never had a depreciable interest in this aircraft. During September 2020, *W* enters into a written binding contract with a third party to renovate Airplane #1. The third party begins to renovate Airplane #1 in October 2020 and delivers the renovated aircraft (Airplane #2) to *W* in February 2021. To renovate Airplane #1, the third party used mostly new parts but also used parts from Airplane #1. The cost of the used parts is not more than 20 percent of the total cost of the renovated airplane, Airplane #2. *W* uses Airplane #2 in its trade or business.

(*2*) Although Airplane #2 contains used parts, the cost of the used parts is not more than 20 percent of the total cost of Airplane #2. As a result, Airplane #2 is not treated as reconditioned or rebuilt property, and *W* is considered the original user of Airplane #2, pursuant to paragraph (b)(3)(ii)(A) of this section. Accordingly, assuming all other requirements are met, the amount paid or incurred by *W* for Airplane #2 qualifies for the additional first year depreciation deduction for *W* under this section.

(S) *Example 19.* (*1*) *X,* a freight transportation company, acquires and places in service a new aircraft in 2019 (Airplane #1). During 2022, *X* sells Airplane #1 to *AB* and *AB* uses Airplane #1 in its trade or business. Prior to this acquisition, *AB* never had a depreciable interest in Airplane #1. During January 2023, *AB* enters into a written binding contract with a third party to renovate Airplane #1. The third party begins to renovate Airplane #1 in February 2023 and delivers the renovated aircraft (Airplane #2) to *AB* in June 2023. To renovate Airplane #1, the third party used mostly new parts but also used parts from Airplane #1. The cost of the used parts is not more than 20 percent of the total cost of the renovated airplane, Airplane #2. *AB* uses Airplane #2 in its trade or business. During 2025, *AB* sells Airplane #2 to *X* and *X* uses Airplane #2 in its trade or business.

(*2*) With respect to *X*'s purchase of Airplane #1 in 2019, *X* is the original user of this airplane pursuant to paragraph (b)(3)(ii)(A) of this section. Accordingly, assuming all other requirements are met, *X*'s purchase price for Airplane #1 qualifies for the additional first year depreciation deduction for *X* under this section.

(*3*) Because *AB* never had a depreciable interest in Airplane #1 prior to its acquisition in 2022, the requirements of paragraphs (b)(3)(iii)(A)(*1*) and (b)(3)(ii)(B)(*1*) of this section are satisfied. Accordingly, assuming all other requirements are met, *AB's* purchase price for Airplane #1 qualifies for the additional first year depreciation deduction for *AB* under this section.

(*4*) Although Airplane #2 contains used parts, the cost of the used parts is not more than 20 percent of the total cost of Airplane #2. As a result, Airplane #2 is not treated as reconditioned or rebuilt property, and *AB* is considered the original user of Airplane #2, pursuant to paragraph (b)(3)(ii)(A) of this section. Accordingly, assuming all other requirements are met, the amount paid or incurred by *AB* for Airplane #2 qualifies for the additional first year depreciation deduction for *AB* under this section.

(*5*) With respect to *X*'s purchase of Airplane #2 in 2025, Airplane #2 is substantially renovated property pursuant to paragraph (b)(3)(iii)(B)(*3*) of this section. Also, pursuant to paragraph (b)(3)(iii)(B)(*3*) of this section, *X*'s depreciable interest in Airplane #1 is not taken into account for determining if *X* previously had a depreciable interest in Airplane #2 prior to its acquisition during 2025. As a result, Airplane #2 is not treated as used by *X* at any time before its acquisition of Airplane #2 in 2025 pursuant to paragraph (b)(3)(iii)(B)(*3*) of this section. Accordingly, assuming all other requirements are met, *X*'s purchase price of Airplane #2 qualifies for the additional first year depreciation deduction for *X* under this section.

(T) *Example 20.* 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 under this section.

(U) *Example 21.* (*1*) 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.

(*2*) The sale transaction of May 27, 2018, satisfies the requirements of a syndication transaction described in paragraph (b)(3)(vi) 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. Also, O Corporation, not M Corporation, is treated as having the depreciable interest in 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 additional first year depreciation deduction for O Corporation under this section.

(V) *Example 22.* (*1*) The facts are the same as in *Example 21* of paragraph (b)(3)(vii)(U)(*1*) of this section. 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.

(*2*) 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 (g)(1)(i) of this section.

(*3*) 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 additional first year depreciation deduction for P Corporation under this section.

(W) *Example 23.* (*1*) The facts are the same as in *Example 21* of paragraph (b)(3)(vii)(U)(*1*) of this section, except M Corporation and O Corporation are not related parties within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). Additionally, on March 26, 2020, O Corporation sells to M Corporation the used airplane subject to the lease with N Corporation.

(*2*) The sale transaction of May 27, 2018, satisfies the requirements of a syndication transaction described in paragraph (b)(3)(vi) 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. Also, O Corporation, not M Corporation, is treated as having the depreciable interest in 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 before its acquisition in 2018 and assuming all other requirements are met, O Corporation's purchase price of the used airplane qualifies for the additional first year depreciation deduction for O Corporation under this section.

(*3*) Prior to its acquisition of the used airplane on March 26, 2020, M Corporation never had a depreciable interest in the used airplane pursuant to paragraph (b)(3)(vi) of this section. Assuming all other requirements are met, M Corporation's purchase price of the used airplane on March 26, 2020, qualifies for the additional first year depreciation deduction for M Corporation under this section.

(X) *Example 24.* (*1*) J, K, and L are corporations that are unrelated parties within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c). None of J, K, or L is a member of a consolidated group. J has a depreciable interest in Equipment #5. During 2018, J sells Equipment #5 to K. During 2020, J merges into L in a transaction described in section 368(a)(1)(A). In 2021, L acquires Equipment #5 from K.

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

(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) *Qualified film or television production.* 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). The taxpayer that places in service a qualified film or television production must be the owner, as defined in § 1.181–1(a)(2), of the qualified film or television production.

(B) *Qualified live theatrical production.* 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. The taxpayer that places in service a qualified live theatrical production must be the owner, as defined in paragraph (b)(2)(i)(F) of this section and in § 1.181–1(a)(2), of the qualified live theatrical production.

(iv) *Syndication transaction.* If new property is acquired and placed in service by a lessor, or if used property is acquired and placed in service by a lessor and the lessor and any predecessor did not previously have a depreciable interest in the used 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 for purposes of sections 167 and 168, and §§ 1.46–3(d) and 1.167(a)–11(e)(1).

(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*—(A) *In general.* 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 not acquired pursuant to a written binding contract but is considered to be self-constructed property under this paragraph (b)(5). For determination of acquisition date, see paragraph (b)(5)(ii)(B) of this section for property acquired pursuant to a written binding contract and paragraph (b)(5)(iv) of this section for self-constructed property.

(B) *Determination of acquisition date for property acquired pursuant to a written binding contract.* Except as provided in paragraphs (b)(5)(vi) and (vii) of this section, the acquisition date of property that the taxpayer acquired pursuant to a written binding contract is the later of—

(*1*) The date on which the contract was entered into;

(*2*) The date on which the contract is enforceable under State law;

(*3*) If the contract has one or more cancellation periods, the date on which all cancellation periods end. For purposes of this paragraph (b)(5)(ii)(B)(*3*), a cancellation period is the number of days stated in the contract for any party to cancel the contract without penalty; or

(*4*) If the contract has one or more contingency clauses, the date on which all conditions subject to such clauses are satisfied. For purposes of this paragraph (b)(5)(ii)(B)(*4*), a contingency clause is one that provides for a condition (or conditions) or action (or actions) that is within the control of any party or a predecessor.

(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, any 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. If a contract has multiple provisions that limit damages, only the provision with the highest damages is taken into account in determining whether the contract limits damages. Also, 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 under this section.

(G) [Reserved]

(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. 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 September 28, 2017, with another person to manufacture, construct, or produce property and the manufacture, construction, or production of this property begins after September 27, 2017, the acquisition rules in paragraph (b)(5)(ii) of this section are met.

(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 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.

(*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. 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 or other facility 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 (b)(5)(iv)(B)(*2*) 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 (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 under this section. 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 under this section, 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. If a binding contract to acquire the component is entered into after September 27, 2017, 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 under this section, assuming all other requirements are met, but the larger self-constructed property does not.

(*2*) *Self-constructed components.* If the manufacture, construction, or production of a component does not satisfy the requirements of this paragraph (b)(5)(iv), the component does not qualify for the additional first year depreciation deduction under this section. 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 under this section, assuming all other requirements are met, even though the component does not qualify for the additional first year depreciation deduction under this section. Accordingly, the unadjusted depreciable basis of the larger self-constructed property that is eligible for the additional first year depreciation deduction under this section, 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 under this section. 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. If the manufacture, construction, or production of a component begins after September 27, 2017, 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 under this section, assuming all other requirements are met, but the larger self-constructed property does not.

(v) [Reserved]

(vi) *Qualified film, television, or live theatrical production*—(A) *Qualified film or television production.* 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) *Qualified live theatrical production.* 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.

(vii) *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).

(viii) *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:

(A) *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.

(B) *Example 2.* The facts are the same as in *Example 1* of paragraph (b)(5)(viii)(A) of this section. 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.

(C) *Example 3.* The facts are the same as in *Example 1* of paragraph (b)(5)(viii)(A) of this section, 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.

(D) *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.

(E) *Example 5.* The facts are the same as in *Example 4* of paragraph (b)(5)(viii)(D) of this section 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.

(F) *Example 6.* On August 15, 2017, *EE,* an accrual basis taxpayer, 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. The completed aircraft is delivered to *EE* on February 15, 2018, at which time *EE* incurred the total cost of the aircraft. *EE* places the aircraft in service on March 1, 2018. Pursuant to paragraphs (b)(5)(ii)(A) and (b)(5)(iv)(A) of this section, the aircraft is considered to be manufactured by *EE.* Because *EE* began manufacturing the aircraft after September 27, 2017, the aircraft qualifies for the 100-percent additional first year depreciation deduction, assuming all other requirements are met.

(G) *Example 7.* On June 1, 2017, *HH* entered into a written binding contract with GG 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.

(H) *Example 8.* The facts are the same as in *Example 7* of paragraph (b)(5)(viii)(G) of this section except that *HH* entered into the written binding contract with GG 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.

(I) *Example 9.* On September 1, 2017, *II* acquired and placed in service equipment. On January 15, 2018, *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 qualifies for the 100-percent additional first year depreciation deduction for *JJ.*

(J) *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 January 15, 2018, *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 *KK* began construction of the property 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 qualifies for the 100-percent additional first year depreciation deduction for *LL.*

(K) *Example 11. MM,* a calendar year taxpayer, is engaged in a trade or business described in section 163(j)(7)(A)(iv). In December 2018, *MM* began constructing a new electric generation power plant for its own use. *MM* placed in service this new power plant, including all component parts, in 2020. Even though *MM* began constructing the power plant after September 27, 2017, none of *MM'*s total expenditures of the power plant qualify for the additional first year depreciation deduction under this section because, pursuant to paragraph (b)(2)(ii)(F) of this section, the power plant is property that is primarily used in a trade or business described in section 163(j)(7)(A)(iv) and the power plant was placed in service in *MM'*s taxable year beginning after 2017.

(c) [Reserved]

(d) *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), including its components, 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 (d), 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 (d)(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 (d)(1) of this section is met.

(ii) *When does manufacture, construction, or production begin*—(A) *In general.* For purposes of this paragraph (d)(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 (d)(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 (d)(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 (d)(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 (d)(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 (d)(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 (d)(1) of this section, the component does not qualify for the additional first year depreciation deduction under this section. 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 (d)(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 under this section, assuming all other requirements are met, must not include the unadjusted depreciable basis of any component that does not satisfy the requirements of paragraph (d)(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 under this section, 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 (d)(3)(i) of this section, the component does not qualify for the additional first year depreciation deduction under this section. However, if the manufacture, construction, or production of a component does not satisfy the requirements of paragraph (d)(3)(i) of this section, but the manufacture, construction, or production of the larger self-constructed property satisfies the requirements of paragraph (d)(3)(i) of this section, the larger self-constructed property qualifies for the additional first year depreciation deduction under this section, assuming all other requirements are met, even though the component does not qualify for the additional first year depreciation deduction under this section. Accordingly, the unadjusted depreciable basis of the larger self-constructed property that is eligible for the additional first year depreciation deduction under this section, 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 under this section. 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 under this section, assuming all other requirements are met, but the larger self-constructed property does not.

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

(A) *Example 1.* (*1*) On June 1, 2016, *NN* 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 *NN.* On August 15, 2016, *NN* entered into a written binding contract with *OO* to acquire this component part of the property for $100,000. *OO* began manufacturing the component part on November 1, 2016, and delivered the completed component part to *NN* on September 1, 2017, at which time *NN* incurred $100,000 for the cost of the component. The cost of this component part is 9 percent of the total cost of the property to be constructed by *NN. NN* did not incur any other cost of the property to be constructed before *NN* began construction. *NN* began constructing the property described in section 168(k)(2)(B) on October 15, 2017, and placed in service this property, including all component parts, on November 1, 2020. *NN* uses the safe harbor test in paragraph (d)(3)(ii)(B) of this section to determine when physical work of a significant nature begins for the property described in section 168(k)(2)(B).

(*2*) Because the component part of $100,000 that was manufactured by *OO* for *NN* is not more than 10 percent of the total cost of the property described in section 168(k)(2)(B), physical work of a significant nature for the property described in section 168(k)(2)(B) did not begin before September 28, 2017.

(*3*) Pursuant to paragraphs (b)(5)(iv)(C)(*2*) and (d)(1) of this section, the self-constructed component part of $100,000 manufactured by *OO* for *NN* is not eligible for the 100-percent additional first year depreciation deduction because the manufacturing of such component part began before September 28, 2017. However, pursuant to paragraph (d)(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 *OO* for *NN,* 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 *NN* during 2020.

(B) *Example 2.* (*1*) On June 1, 2026, *PP* 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 *PP.* On August 15, 2026, *PP* entered into a written binding contract with *XP* to acquire this component part of the property for $100,000. *XP* began manufacturing the component part on September 1, 2026, and delivered the completed component part to *PP* on February 1, 2027, at which time *PP* incurred $100,000 for the cost of the component. The cost of this component part is 9 percent of the total cost of the property to be constructed by *PP. PP* did not incur any other cost of the property to be constructed before *PP* began construction. *PP* 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.

(*2*) Pursuant to paragraph (d)(3)(iii)(B) of this section, the self-constructed component part of $100,000 manufactured by *XP* for *PP* is eligible for the additional first year depreciation deduction under this section, 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 *PP* before January 1, 2028. However, pursuant to paragraph (d)(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 *XP* for *PP,* is not eligible for the additional first year depreciation deduction under this section because construction of the property began after December 31, 2026.

(C) *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 (d)(3)(i) of this section, the aircraft meets the requirements of paragraph (d)(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 under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Computer software as defined in, and depreciated under, section 167(f)(1) and § 1.167(a)–14(b);

(D) Qualified improvement property as defined in § 1.168(b)–1(a)(5)(i)(C) and (a)(5)(ii), 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 (f)(1)(ii)(A) through (F), and (f)(2) of this section (for further guidance, see § 1.743–1(j)(4)(i)(B)(*1*)).

(iii) *Time and manner for making election*—(A) *Time for making election.* Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(1)(i) of this section must be made by the due date, including extensions, of the Federal tax return for the taxable year in which the qualified property is placed in service by the taxpayer.

(B) *Manner of making election.* Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(1)(i) of this section must be made in the manner prescribed on Form 4562, ''Depreciation and Amortization,'' and its instructions. The election is made separately by each person owning qualified property (for example, for each member of a consolidated group by the common parent of the group, by the partnership (including a lower-tier partnership; also including basis adjustments in the partnership assets under section 743(b)), or by the S corporation). If Form 4562 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

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

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

(ii) *Time and manner for making election*—(A) *Time for making election.* Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(2)(i) of this section must be made by the due date, including extensions, of the Federal tax return for the taxable year in which the taxpayer planted or grafted the specified plant to which the election applies.

(B) *Manner of making election.* Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(2)(i) of this section must be made in the manner prescribed on Form 4562, ''Depreciation and Amortization,'' and its instructions. The election is made separately by each person owning specified plants (for example, for each member of a consolidated group by the common parent of the group, by the partnership (including a lower-tier partnership), or by the S corporation). If Form 4562 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

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

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

(ii) *Time and manner for making election*—(A) *Time for making election.* Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(3)(i) of this section must be made by the due date, including extensions, of the Federal tax return for the taxpayer's taxable year that includes September 28, 2017.

(B) *Manner of making election.* Except as provided in paragraph (f)(6) of this section, any election specified in paragraph (f)(3)(i) of this section must be made in the manner prescribed on the 2017 Form 4562, ''Depreciation and Amortization,'' and its instructions. The election is made separately by each person owning qualified property (for example, for each member of a consolidated group by the common parent of the group, by the partnership (including a lower-tier partnership), or by the S corporation).

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

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

(5) *Revocation of election*–(i) *In general.* Except as provided in paragraphs (f)(5)(ii) and (f)(6) of this section, an election specified in this paragraph (f), once made, may be revoked only by filing a request for a private letter ruling and obtaining the Commissioner of Internal Revenue's written consent to revoke the election. The Commissioner may grant a request to revoke the election if the taxpayer acted reasonably and in good faith, and the revocation will not prejudice the interests of the Government. See generally § 301.9100–3 of this chapter. An election specified in this paragraph (f) may not be revoked through a request under section 446(e) to change the taxpayer's method of accounting.

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

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

(g) *Special rules*—(1) *Property placed in service and disposed of in the same taxable year*—(i) *In general.* Except as provided in paragraphs (g)(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. If a partnership interest is acquired and disposed of during the same taxable year, the additional first year depreciation deduction is not allowed for any section 743(b) adjustment arising from the initial acquisition. 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. If a partnership interest is purchased and transferred in a transaction described in section 168(i)(7) in the same taxable year, the additional first year depreciation deduction is allowable for any section 743(b) adjustment that arises from the initial acquisition with respect to qualified property held by the partnership, provided the requirements of paragraph (b)(3)(iv)(D) of this section and all other requirements of section 168(k) and this section are satisfied. 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. The allowable additional first year depreciation deduction for a section 743(b) adjustment with respect to qualified property held by the partnership is allocated between the transferor and the transferee on a monthly basis notwithstanding that under § 1.743–1(f) a transferee's section 743(b) adjustment is determined without regard to a transferors section 743(b) adjustment. These allocations 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 acquired or planted or grafted, as applicable, by the transferor, the qualified property is deemed to be placed in service or planted or grafted, as applicable, by the transferor during that taxable year, and 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 (g)(1) is illustrated by the following examples:

(A) *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 (g)(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.

(B) *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 (g)(1)(iii) of this section, the 100-percent additional first year depreciation deduction allowable for the qualified property is allocated between *XX* and *Partnership BC* in accordance with the rules in § 1.168(d)–1(b)(7)(ii) for allocating the depreciation deduction between the transferor and the transferee. Accordingly, the 100-percent additional first year depreciation deduction allowable of $9,000 for the qualified property for 2018 is allocated between *XX* and *Partnership BC* based on the number of months that *XX* and *Partnership BC* held the qualified property in service during 2018. Thus, because the qualified property was held in service by *XX* for 7 of 12 months, which includes the month in which *XX* placed the qualified property in service but does not include the month in which the qualified property was transferred, *XX* is allocated $5,250 ($7/12 \times$ $9,000 additional first year depreciation deduction). *Partnership BC* is allocated $3,750, the remaining $5/12$ of the $9,000 additional first year depreciation deduction allowable for the qualified property.

(2) *Redetermination of basis.* If the unadjusted depreciable basis, as defined

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

(i) *Increase in basis.* For the taxable year in which an increase in basis of qualified property occurs, the taxpayer shall claim an additional first year depreciation deduction for qualified property by multiplying the amount of the increase in basis for this property by the applicable percentage for the taxable year in which the underlying property was placed in service by the taxpayer. For purposes of this paragraph (g)(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, a qualified film or television production described in paragraph (b)(2)(i)(E) of this section, or a qualified live theatrical production described in paragraph (b)(2)(i)(F) 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 (g)(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 (g)(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, a qualified film or television production described in paragraph (b)(2)(i)(E) of this section, or a qualified live theatrical production described in paragraph (b)(2)(i)(F) 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 (g)(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 (g)(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 (g)(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 (g)(2) is illustrated by the following examples:

(A) *Example 1.* (*1*) 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.

(*2*) 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).

(*3*) 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 (g)(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).

(B) *Example 2.* (*1*) 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.

(*2*) 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).

(*3*) 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.

(*4*) 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 (g)(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 §§ 1.1245–1 through –6, the additional first year depreciation deduction is an amount allowed or allowable for depreciation. Further, for purposes of section 1250(b) and § 1.1250–2, 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 §§ 1.169–1 through –4 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 (g)(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 (g)(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 (g)(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 (g)(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 § 1.1031(d)–1, 1.1031(d)–2, 1.1031(j)–1, or 1.1031(k)–1; or section 1033(b) and § 1.1033(b)–1; 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 § 1.1031(d)–1, 1.1031(d)–2, 1.1031(j)–1, or 1.1031(k)–1; or section 1033(b) and § 1.1033(b)–1, over the exchanged basis as determined under paragraph (g)(5)(ii)(G) of this section.

(I) *Remaining exchanged basis* is the exchanged basis as determined under paragraph (g)(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 (g)(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 under this section. 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 under this section. 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 (g)(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 (g)(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, then:

(*1*) If 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 under this section; or

(*2*) If 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 under this section.

(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 (g)(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 (e) 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 (g)(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 (g)(5)(iv)(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 (g)(5) is illustrated by the following examples:

(A) *Example 1.* (*1*) 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).

(*2*) 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).

(*3*) 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).

(*4*) Pursuant to paragraph (g)(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)).

(B) *Example 2.* (*1*) The facts are the same as in *Example 1* of paragraph (g)(5)(v)(A)(*1*) of this section, 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.

(*2*) 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).

(*3*) 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).

(*4*) Pursuant to paragraph (g)(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)).

(C) *Example 3.* The facts are the same as in *Example 1* of paragraph (g)(5)(v)(A)(*1*) of this section, 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 (g)(5)(iii)(A) of this section.

(D) *Example 4.* (*1*) 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).

(*2*) 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).

(*3*) 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).

(*4*) Pursuant to paragraph (g)(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.

(E) *Example 5.* (*1*) 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).

(*2*) 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.

(*3*) Pursuant to paragraph (g)(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 (g)(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.

(F) *Example 6.* (*1*) The facts are the same as in *Example 5* of paragraph (g)(5)(v)(E)(*1*) of this section, 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.

(*2*) 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.

(*3*) 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 (g)(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 MACRS property.* The determination of whether the use of MACRS property, as defined in § 1.168(b)–1(a)(2), 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. See § 1.168(i)–4(b)(1) for determining the depreciable basis of the property at the time of conversion 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. See § 1.168(i)–4(b)(1) for determining the depreciable basis of the property at the time of conversion 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 (g)(6) is illustrated by the following examples:

(A) *Example 1.* (*1*) 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.

(*2*) 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 (g)(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.

(B) *Example 2.* (*1*) 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.

(*2*) 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).

(*3*) 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 (f)(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 (e)(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 (g)(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 (g)(9) is illustrated by the following example:

(A) 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 (f) of this section.

(B) Because *JM* did not make any election under paragraph (f) 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).

(11) [Reserved]

(h) *Applicability dates*—(1) *In general.* Except as provided in paragraphs (h)(2) and (3) 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 September 24, 2019; 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 September 24, 2019.

(2) *Early application of this section.* A taxpayer may choose to apply this section, in its entirety, to—

(i) Qualified property under section 168(k)(2) acquired and placed in service after September 27, 2017, by the taxpayer during the taxpayer's taxable year ending on or after September 28, 2017; 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 the taxpayer's taxable year ending on or after September 28, 2017.

(3) *Early application of regulation project REG–104397–18.* A taxpayer may rely on the provisions of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(*b*) of this chapter) for—

(i) Qualified property under section 168(k)(2) acquired and placed in service after September 27, 2017, by the taxpayer during the taxpayer's taxable year ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes September 24, 2019; 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 the taxpayer's taxable year ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes September 24, 2019.

■ **Par. 10.** Section 1.169–3 is amended by adding a sentence at the end of paragraph (a) and adding three 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 September 24, 2019. However, a taxpayer may choose to apply the last sentence of paragraph (a) of this section to 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. A taxpayer may rely on the last sentence in paragraph (a) of this section in regulation project REG–104397–18 (2018–41 IRB 558) (see § 601.601(d)(2)(ii)(b) of this chapter) 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 September 24, 2019.

■ **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) made for a disposition described in § 1.336–2(b)(1) 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 paragraphs (e)(2) and (3) of this section, the provisions of § 1.179–4(c)(2) relating to section 336(e) are applicable on or after September 24, 2019.

(2) *Early application of § 1.179–4(c)(2).* A taxpayer may choose to apply the provisions of § 1.179–4(c)(2) relating to section 336(e) for the taxpayer's taxable years ending on or after September 28, 2017.

(3) *Early application of regulation project REG–104397–18.* A taxpayer may rely on the provisions of § 1.179–4(c)(2) relating to section 336(e) in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for the taxpayer's taxable years ending on or after September 28, 2017, and ending before September 24, 2019.

■ **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(g)(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)(1) of this section applies to the taxpayer's taxable years ending on or after September 24, 2019. However, a taxpayer may choose to apply the last sentence in paragraph (a)(1) of this section for the taxpayer's taxable years ending on or after September 28, 2017. A taxpayer may rely on the last sentence in paragraph (a)(1) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for the taxpayer's taxable years ending on or after September 28, 2017, and ending before the taxpayer's taxable year that includes September 24, 2019.

■ **Par. 14.** Section 1.704–1 is amended by adding three 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 September 24, 2019. However, a partnership may choose to apply the last sentence in paragraph (b)(2)(iv)(*g*)(*3*) of this section for the partnership's taxable years ending on or after September 28, 2017. A partnership may rely on the last sentence in paragraph (b)(2)(iv)(g)(3) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for the partnership's taxable years ending on or after September 28, 2017, and ending before the partnership's taxable year that includes September 24, 2019.

* * * * *

(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 adding a sentence at the end of paragraph (d)(2), revising the first sentence in paragraph (f), and adding three sentences at the end of paragraph (f) to 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 property 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 September 24, 2019. However, a taxpayer may choose to apply the last sentence in paragraph (d)(2) of this section for property contributed to a partnership on or after September 28, 2017. A taxpayer may rely on the last sentence in paragraph (d)(2) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for property contributed to a partnership on or after September 28, 2017, and ending before September 24, 2019.

* * * * *

■ **Par. 16.** Section 1.743–1 is amended by adding three sentences to the end of paragraph (j)(4)(i)(B)(*1*), adding one new sentence at the end of paragraph (j)(4)(i)(B)(*2*), and adding three 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*) * * * 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(f)(1)(ii)(A) through (F), even if the partnership made the election under section 168(k)(7) and § 1.168(k)–2(f)(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(f)(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(f)(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(f)(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(f)(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.

(*2*) * * * The first sentence of this paragraph (j)(4)(i)(B)(*2*) does not apply to a partnership that is not a publicly traded partnership within the meaning of section 7704(b) with respect to any basis increase under section 743(b) that is recovered using the additional first year depreciation deduction under section 168(k).

* * * * *

(l) * * * The last three sentences of paragraph (j)(4)(i)(B)(*1*) of this section, and the last sentence of paragraph (j)(4)(i)(B)(*2*) of this section, apply to transfers of partnership interests that occur on or after September 24, 2019. However, a partnership may choose to apply the last three sentences in paragraph (j)(4)(i)(B)(1) of this section, and the last sentence of paragraph (j)(4)(i)(B)(2) of this section, for transfers of partnership interests that occur on or after September 28, 2017.

A partnership may rely on the last three sentences in paragraph (j)(4)(i)(B)(1) of this section in regulation project REG–104397–18 (2018–41 I.R.B. 558) (see § 601.601(d)(2)(ii)(b) of this chapter) for transfers of partnership interests that occur on or after September 28, 2017, and ending before September 24, 2019.

Kirsten Wielobob,

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Approved: September 11, 2019.

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