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[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-106808-19]

RIN 1545-BP32

Additional First Year Depreciation Deduction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; partial withdrawal of a notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance regarding the additional first year depreciation deduction under section 168(k) of the Internal Revenue Code (Code). These proposed regulations reflect and clarify the increase of the benefit and expansion of the universe of qualifying property, particularly to certain classes of used property, made by the Tax Cuts and Jobs Act. These proposed regulations generally affect taxpayers who deduct depreciation for qualified property acquired and placed in service after September 27, 2017. This document also provides notice of a public hearing on these proposed regulations. Finally, this document withdraws a portion of the proposed regulations published on August 8, 2018.

DATES: Written or electronic comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Outlines of topics to be discussed at the public hearing scheduled for Wednesday, November 13, 2019, at 10 a.m. must be received by October 23, 2019. If no outlines of topics are received by

October 23, 2019, the public hearing will be cancelled.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-106808-19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG-106808-19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-106808-19), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Elizabeth R. Binder or Kathleen Reed, (202) 317-7005; concerning submissions of comments and outlines of topics, the hearing, or to be placed on the building access list to attend the hearing, Regina L. Johnson, (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### **Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 168(k) of the Code. 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.

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

The Treasury Department and the IRS published proposed regulations interpreting section 168(k) on August 8, 2018 (the August Proposed Regulations) (83 FR 39292). This notice of proposed rulemaking withdraws §1.168(k)-2(b)(3)(iii)(B)(3)(i) through (iii) and Examples 19 through 22 in §1.168(k)-2(b)(3)(vi) of the August Proposed Regulations, and proposes in their place §1.168(k)-2(b)(3)(v)(A) through (E) and Examples 26 through 30 in §1.168(k)-2(b)(3)(vii)(Z) through (DD), respectively. This notice of proposed rulemaking also withdraws §1.168(k)-2(b)(3)(iii)(C) and Example 18 in §1.168(k)-2(b)(3)(vi) of the August Proposed Regulations, and proposes in their place §1.168(k)-2(b)(3)(iii)(C) and Examples 31 through 34 in §1.168(k)-2(b)(3)(vii)(EE) through (HH), respectively. The August Proposed Regulations, with modifications in response to comments and testimony received, were adopted as final regulations, issued concurrently with these proposed regulations and published elsewhere in this issue of the **Federal Register** (the Final Regulations).

## **Explanation of Provisions**

These proposed regulations propose amendments to the Final Regulations to provide taxpayers with guidance that is not addressed in the Final Regulations regarding the application of section 168(k). Specifically, these proposed regulations contain amendments to §1.168(k)-2(b)(2), (3), and (5) of the Final Regulations, each of which provides rules relevant to the definition of qualified property for purposes of the additional first year depreciation deduction under section 168(k). These proposed regulations also amend §1.168(k)-2(b)(3)(v) by adding special rules for consolidated groups. Additionally, these proposed regulations amend §1.168(k)-2(c) by adding rules regarding components acquired or self-constructed after September 27, 2017, for larger self-constructed property for which manufacture, construction, or production began before September 28, 2017. Further, these proposed regulations amend §1.168(k)-2(g)(11) by adding rules regarding the application of the mid-quarter convention, as determined under section 168(d). These additional proposed rules respond to comments received on the August Proposed Regulations as well as address certain issues identified after additional study. This Explanation of Provisions section describes each of the proposed rules contained in this document.

1. Property Excluded from the Additional First Year Depreciation Deduction by Section 168(k)(9)

Section 1.168(k)-2(b)(2)(ii)(F) of the Final Regulations provides 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). Section 1.168(k)-2(b)(2)(ii)(G) of the Final Regulations provides that qualified property does not include any property used in a trade or business that has had floor plan financing indebtedness, as defined in section

163(j)(9), if the floor plan financing interest, 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. Sections 1.168(k)-2(b)(2)(ii)(F) and (G) of the Final Regulations apply to property placed in service by the taxpayer in a taxable year beginning after December 31, 2017.

#### A. Lessor Leasing Property to a Trade or Business Described in Section 168(k)(9)

Several commenters to the August Proposed Regulations 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, and they recommend allowing the additional first year depreciation deduction (assuming all other requirements are met). The Treasury Department and the IRS agree with the commenters' recommendation, provided the lessor is not described in section 168(k)(9)(A) or (B). Accordingly, these proposed regulations amend §1.168(k)-2(b)(2)(ii)(F) and (G) to provide that such exclusion from the additional first year depreciation deduction does not apply to lessors of property to a trade or business described in section 168(k)(9) so long as the lessor is not described in such Code section.

#### B. Property Described in Section 168(k)(9)(A)

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). For depreciation purposes, §1.167(a)-11(b)(4)(iii)(b) and (e)(3)(iii) classify property according to its primary use. The Treasury Department and the IRS believe that the same standard should apply for purposes of section 168(k)(9)(A). Accordingly, these proposed regulations amend §1.168(k)-

2(b)(2)(ii)(F) to provide that for purposes of section 168(k)(9)(A) and §1.168(k)-2(b)(2)(ii)(F), the term primarily used has the same meaning as that term is used in §1.167(a)-11(b)(4)(iii)(b) and (e)(3)(iii) for classifying property.

#### C. Property Described in Section 168(k)(9)(B)

A commenter to the August Proposed Regulations requested guidance on when floor plan financing is “taken into account” for purposes of section 168(k)(9)(B). The commenter believed that section 168(k)(9)(B) does not apply when a taxpayer does not deduct interest in excess of the sum of the amounts calculated under section 163(j)(1)(A) and (B). The Treasury Department and the IRS do not believe that section 163(j) is optional. However, the Treasury Department and the IRS agree that, for purposes of section 168(k)(9)(B), floor plan financing interest is not taken into account by a trade or business that has had floor plan financing indebtedness if the sum of the amounts calculated under section 163(j)(1)(A) and (B) for the trade or business for the taxable year equals or exceeds the business interest, as defined in section 163(j)(5) (including carryforwards of disallowed business interest under section 163(j)(2)), which includes floor plan financing interest of the trade or business, for the taxable year. Accordingly, these proposed regulations amend §1.168(k)-2(b)(2)(ii)(G) to provide that solely for purposes of section 168(k)(9)(B) and §1.168(k)-2(b)(2)(ii)(G), floor plan financing interest is not taken into account for the taxable year by a trade or business that has had floor plan financing indebtedness if the sum of the amounts calculated under section 163(j)(1)(A) and (B) for the trade or business for the taxable year equals or exceeds the business interest, as defined in section 163(j)(5), for the taxable year.

If floor plan financing interest is taken into account for a taxable year by a trade

or business that has had floor plan financing indebtedness, the Treasury Department and the IRS are aware that taxpayers and practitioners have questioned whether the additional first year depreciation deduction is not allowed for property placed in service by that trade or business in any subsequent taxable year. In such a case, the additional first year depreciation deduction for subsequent taxable years would not be allowed, even if the amount of the floor plan financing interest taken into account for the current taxable year is de minimis. For this reason, the Treasury Department and the IRS have decided that, for purposes of section 168(k)(9)(B), the determination of whether a trade or business that has had floor plan financing indebtedness has taken into account floor plan financing interest is made annually. Accordingly, these proposed regulations amend §1.168(k)-2(b)(2)(ii)(G) to provide that if the trade or business has taken floor plan financing interest into account pursuant to §1.168(k)-2(b)(2)(ii)(G) for a taxable year, §1.168(k)-2(b)(2)(ii)(G) applies to any property placed in service by that trade or business in that taxable year.

## 2. Used Property

### A. Depreciable Interest

As a result of comments received on the August Proposed Regulations regarding sale-leaseback transactions, the Treasury Department and the IRS have determined that it is appropriate to provide an exception to the depreciable interest rule in the Final Regulations when the taxpayer disposes of property within a short period of time after the taxpayer placed such property in service. Accordingly, these proposed regulations amend §1.168(k)-2 by adding paragraph (b)(3)(iii)(B)(4) to provide that if (a) a taxpayer acquires and places in service property, (b) the taxpayer or a predecessor did not

previously have a depreciable interest in the property, (c) the taxpayer disposes of the property to an unrelated party within 90 calendar days after the date the property was originally placed in service by the taxpayer (without taking into account the applicable convention), and (d) the taxpayer reacquires and again places in service the property, the taxpayer's depreciable interest in the property during that 90-day period is not taken into account for determining whether the property was used by the taxpayer or a predecessor at any time prior to its reacquisition by the taxpayer. The 90-day period is consistent with the period of time specified in section 168(k)(2)(E)(iii). To prevent the churning of assets, this proposed rule does not apply if the taxpayer reacquires and again places in service the property during the same taxable year the taxpayer disposed of the property. The proposed regulations also define an unrelated party as meaning a person not described in section 179(d)(2)(A) or (B), and §1.179-4(c)(1)(ii) or (iii), or (c)(2).

#### B. Application to Partnerships

One commenter to the August Proposed Regulations asked for clarification regarding a partner's depreciable interest in property held by a partnership. The Treasury Department and the IRS clarify in these proposed regulations the extent to which a person is treated as having a depreciable interest in property by virtue of being a partner in a partnership that holds the property.

Under the August Proposed Regulations, each partner is treated as having owned and used the partner's proportionate share of partnership property for purposes of determining whether a section 743(b) basis adjustment meets the used property acquisition requirements of section 168(k)(2)(E)(ii). Consistent with this approach, a



person should be considered as having a depreciable interest in a portion of property if the person is a partner in the partnership while the partnership owns the property. The same rule should apply whether a current partner purchases property directly from the partnership or a person acquires property that the partnership previously owned while the person was a partner.

These proposed regulations amend §1.168(k)-2 by adding paragraph (b)(3)(iii)(B)(5) to provide that a partner is considered to have a depreciable interest in a portion of property equal to the partner's total share of depreciation deductions with respect to the property as a percentage of the total depreciation deductions allocated to all partners with respect to that property during the current calendar year and five calendar years immediately prior to the partnership's current placed-in-service year of the property. For this purpose, only the portion of the current calendar year and previous 5-year period during which the partnership owned the property and the person was a partner is taken into account. The Treasury Department and the IRS believe that this provides an accurate reflection of the partner's prior depreciable interest in the property.

#### C. 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 relationship between the original transferor and the ultimate transferee is tested immediately after the last transaction in the series (related transactions rule).

A commenter requested clarification on whether the related transactions rule applies only to test relatedness under section 179(d)(2)(A) or whether this rule applies more broadly for purposes of all of the rules under section 168(k)(2)(E)(ii). For example, if, in a series of related transactions, A transfers property to B in exchange for cash and B transfers property to C in a nonrecognition transaction in exchange for stock or other property, the commenter states that it is not clear whether the related transactions rule is intended to test only the relatedness between A and C under section 179(d)(2)(A). If this rule is intended to apply more broadly, the commenter states that it is not clear whether the rule also determines the basis of the property or whether B's prior use of the property is relevant.

The commenter also requested clarification on whether the related transactions rule applies to transactions described in §1.168(k)-2(f)(1)(iii) of the August Proposed Regulations (qualified property that 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). For example, if a person purchased qualified property and contributed it to a partnership in a transaction described in section 721 in the same taxable year, the commenter questioned whether the related transactions rule would treat the transfer as occurring directly between the original seller and the partnership, assuming that the initial acquisition of the property by the person and the person's transfer of such property to the partnership are part of a series of related transactions.

The Treasury Department and the IRS intended to apply the related transactions rule only for purposes of testing the relatedness of the parties under section 179(d)(2)(A) or (B) in a series of related transactions. The related transactions rule was

not intended to test relatedness between the parties involved in a transaction described in section 168(i)(7).

These proposed regulations amend §1.168(k)-2 by revising paragraph (b)(3)(iii)(C) to provide rules for a series of related transactions (proposed related transactions rule). The proposed related transactions rule generally provides that the relationship between the parties under section 179(d)(2)(A) or (B) in a series of related transactions is tested immediately after each step in the series, and between the original transferor and the ultimate transferee immediately after the last transaction in the series.

The Treasury Department and the IRS believe that the relationship between the parties in a series of related transactions should not be tested in certain cases. Accordingly, the proposed related transactions rule provides that a party in the series that is neither the original transferor nor the ultimate transferee is disregarded in applying the relatedness test if the party placed in service and disposed of the property in the party's same taxable year or did not place the property in service. The proposed related transactions rule also provides that any step in a series of related transactions that is neither the original step nor the ultimate step is disregarded for purposes of testing relatedness if the step is a transaction described in §1.168(k)-2(g)(1)(iii) (that is, a transfer of property in a transaction described in section 168(i)(7) in the same taxable year that the property is placed in service by the transferor) (§1.168(k)-2(f)(1)(iii) of the August Proposed Regulations). Finally, these proposed regulations provide that the proposed related transactions rule does not apply when all transactions in the series are

described in §1.168(k)-2(g)(1)(iii) or to a syndication transaction described in §1.168(k)-2(b)(3)(vi).

The commenter also requested clarification on the application of the related transactions rule in transactions involving sections 179(d)(2)(B) and 1563. For example, if there is a series of related transactions involving a sale of qualified property between two corporations that also become members of the same controlled group, section 179(d)(2)(B) would require testing whether the two corporations are component members of the same controlled group for purposes of section 1563. Under section 1563 and the regulations issued thereunder, a corporation is generally a component member of a controlled group if it is a member of the controlled group for at least one half of the days in the relevant taxable year. See §1.1563-1(b). If the corporations both become members of the controlled group pursuant to a series of related transactions ending in the first half of the taxable year, the corporations should be component members for purposes of section 179(d)(2)(B). However, if the series of related transactions ends in the second half of the taxable year, the commenter questioned whether the related transactions rule applies to treat the two corporations as non-members prior to the end of the series of related transactions, in which case the purchaser of the qualified property may be eligible for immediate expensing (setting aside the potential application of section 179(d)(2)(A)).

The Treasury Department and the IRS also received comments concerning the application of section 179(d)(2)(B) to Example 21 of §1.168(k)-2(b)(3)(vi) in the August Proposed Regulations. In response, the Treasury Department and the IRS have proposed new rules covering the application of section 179(d)(2)(B) to acquisitions of

depreciable property between members of the same consolidated group, as explained in the following section of this Explanation of Provisions.

#### D. Application to Members of a Consolidated Group

##### i. Overview of Used Property Acquisition Requirements

Section 1.168(k)-2(b)(3)(iii)(A) of the August Proposed Regulations and the Final Regulations lists the following three requirements that must be satisfied in order for acquisitions of used property to qualify for the additional first year depreciation deduction (used property acquisition requirements). First, the property must not have been used by the taxpayer or a predecessor at any time prior to the acquisition (No Prior Use Requirement). Second, the acquisition of the property must satisfy §1.168(k)-2(b)(3)(iii)(A)(2) of the August Proposed Regulations and the Final Regulations, which requires that (a) the property was not acquired from a related person (within the meaning of section 179(d)(2)(A) and §1.179-4(c)(1)(ii)) (Related Party Requirement), (b) the property was not acquired by one component member of a controlled group from another component member of the same controlled group (Component Member Requirement), and (c) the basis of the property in the hands of the acquirer is not determined, in whole or in part, by reference to the adjusted basis in the hands of the transferor. Third, the acquisition of the property must meet the requirements of section 179(d)(3) and §1.179-4(d) (concerning like-kind exchanges and involuntary conversions).

##### ii. Application of the Used Property Acquisition Requirements to Consolidated Groups

Section 1.168(k)-2(b)(3)(iii)(B)(3) of the August Proposed Regulations provides special rules applying the No Prior Use Requirement to consolidated groups. Section

1.168(k)-2(b)(3)(iii)(B)(3)(i) of the August Proposed Regulations treats a member that acquires depreciable property as having a prior depreciable interest in such property if the consolidated group had a depreciable interest at any time prior to the member's acquisition of the property (Group Prior Use Rule). For these purposes, a consolidated group is treated as having a depreciable interest in property during the period in which any current or previous member of the consolidated group had a depreciable interest in the property while a member of the consolidated group. Section 1.168(k)-2(b)(3)(iii)(B)(3)(ii) of the August Proposed Regulations provides that, for purposes of applying the No Prior Use Requirement, a member is treated as having a depreciable interest in property prior to the time of its acquisition if, as part of a series of related transactions, the property is acquired by a member of a consolidated group and a corporation that had a depreciable interest in the property becomes a member of that consolidated group (Stock and Asset Acquisition Rule). For purposes of applying these two rules, §1.168(k)-2(b)(3)(iii)(B)(3)(iii) of the August Proposed Regulations provides that, 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.

Commenters have asked for clarification regarding the application of the Group Prior Use Rule to situations in which a consolidated group terminates as a result of all of its members joining another consolidated group, including as a result of a reverse acquisition as defined in §1.1502-75(d)(3). By its terms, the Group Prior Use Rule applies only to the acquisition of property by a member of a consolidated group. Thus,

the Treasury Department and the IRS have determined that this rule should apply only as long as the consolidated group remains in existence, as determined under §1.1502-75(d) and other applicable law.

Several commenters also have requested confirmation that a member of a consolidated group that is treated as having a depreciable interest in property solely as a result of the application of the Group Prior Use Rule does not continue to be treated under that rule as having a depreciable interest in the property after the member leaves the consolidated group (that is, deconsolidates). Commenters have noted that, if a former member continues to be treated as having a depreciable interest in the property after deconsolidation, the Stock and Asset Acquisition Rule could apply whenever one consolidated group acquires from another consolidated group both qualified property and the stock of a member of that second consolidated group (the target member), even if the target member had no actual depreciable interest in the qualified property (as opposed to a depreciable interest arising solely from the application of the Group Prior Use Rule).

The Treasury Department and the IRS did not intend the Group Prior Use Rule to continue to apply to a member of a consolidated group after the member leaves that consolidated group. By its terms, the Group Prior Use Rule applies only as long as a corporation remains a member of a consolidated group. Therefore, when a member deconsolidates, it does not continue to be treated under that rule as having a depreciable interest in the property. Accordingly, a departing member does not continue to have a depreciable interest in the property unless it actually owned such property.

Further, the Treasury Department and the IRS intended the Stock and Asset Acquisition Rule to apply only when the member whose stock is acquired had an actual depreciable interest in the qualified property that also is acquired as part of the same series of related transactions. Accordingly, these proposed regulations clarify that the phrase “a corporation that had a depreciable interest in the property” in the Stock and Asset Acquisition Rule refers only to a corporation that has such an interest without regard to the application of the Group Prior Use Rule.

iii. Sales of Property Between Members of the Same Consolidated Group (Example 21 in §1.168(k)-2(b)(3)(vi) of the August Proposed Regulations)

The Treasury Department and the IRS have received comments regarding the interaction of the August Proposed Regulations for consolidated groups with the statutorily prescribed Related Party Requirement and Component Member Requirement, as illustrated by Example 21 in §1.168(k)-2(b)(3)(vi) of the August Proposed Regulations (Former Example 21). Generally, a corporation qualifies as a component member of a controlled group if the corporation was a member of such controlled group during the majority of the corporation’s taxable year. See section 1563(b). In addition, the taxable year of a member of a consolidated group ends for all Federal income tax purposes at the end of the day on which its status as a member changes. See §1.1502-76(b). Therefore, commenters have questioned how the August Proposed Regulations for consolidated groups could apply to treat the Component Member Requirement as satisfied if a member acquires depreciable property from another member of the same consolidated group (selling group) and, as part of an



integrated plan that includes the acquisition, the acquiring member deconsolidates from the selling group.

In Former Example 21, Parent is the common parent of a consolidated group that includes F Corporation (F) and G Corporation (G). G has a depreciable interest in certain equipment (Equipment #3). As part of a series of related transactions, (1) G sells Equipment #3 to F, and then (2) Parent sells all of its F stock to X Corporation (X), the common parent of an unrelated consolidated group. Based on those facts, Former Example 21 concludes that the Group Prior Use Rule does not apply to treat F as previously having a depreciable interest in Equipment #3 because F's status as a member of the Parent consolidated group is tested immediately after the last transaction in the related series, at which point F has ceased to be a member of the Parent consolidated group. Former Example 21 relies on the same analysis to conclude that the Related Party Requirement and Component Member Requirement are also satisfied, and that, assuming all other relevant requirements are satisfied, F would be eligible to claim the additional first year depreciation deduction for Equipment #3.

Commenters also have requested guidance concerning the amount, location, and timing of the additional first year depreciation deduction in transactions similar to the transaction described in Former Example 21. In particular, commenters have asked whether the deduction should be reported on the consolidated return of the Parent consolidated group (that is, the selling group) or on the consolidated return of the X consolidated group (that is, the acquiring group), and whether the deduction would be limited by section 168(i)(7). Commenters have noted that, if F were treated as placing Equipment #3 in service while a member of the Parent consolidated group, the

deduction might be reported on the consolidated return of the Parent group. In addition, because the transaction between F and G is an intercompany transaction, section 168(i)(7)(B)(ii) might apply to limit the amount of the deduction to an amount equaling G's gain from the transaction. One commenter further noted that, even if section 168(i)(7)(B)(ii) did not apply to the transaction, any amount of the deduction in excess of G's gain nevertheless might be disallowed under §1.1502-13 as a noncapital, nondeductible amount.

Commenters have asserted that these potential results regarding the location (the Parent consolidated group) and the amount (an amount not in excess of G's gain) of the deduction would be improper based on the legislative history of section 168(k), which indicates that Congress intended to stimulate economic activity and promote capital investment. See H. Rept. 115-409, at 232 (2017) ("The Committee believes that providing full expensing for certain business assets lowers the cost of capital for tangible property used in a trade or business. With lower costs of capital, the Committee believes that businesses will be encouraged to purchase equipment and other assets, which will promote capital investment and provide economic growth."); H. Rept. 107-251, at 20 (2001) ("The Committee believes that allowing additional first-year depreciation will accelerate purchases of equipment, promote capital investment, modernization, and growth, and will help to spur an economic recovery.").

The Treasury Department and the IRS agree with commenters that, in situations similar to Former Example 21, the additional first year depreciation deduction should be reported on the consolidated return of the acquiring group rather than the selling group. With respect to Former Example 21, the Treasury Department and the IRS note that F

made the economic outlay for Equipment #3, which was included in the amount paid by X for F's stock. Additionally, F's acquisition of Equipment #3 and Parent's sale of the F stock to X occur as part of the same series of related transactions; thus, at the time of F's acquisition of Equipment #3, the parties expected F to deconsolidate from the Parent consolidated group, and the substance of the transaction is the same as if F first became a member of the X consolidated group and then acquired Equipment #3. Furthermore, F's purchase of Equipment #3 is the type of activity that section 168(k) was intended to encourage--if F had become a member of the X consolidated group before purchasing Equipment #3, it is clear that F, as a member of the X consolidated group, would be allowed the deduction in its full amount.

Moreover, in circumstances similar to Former Example 21, the statute and regulations disregard a transitory acquisition of depreciable property when the property is acquired and disposed of within 90 calendar days. See section 168(k)(2)(E)(iii) and §1.168(k)-2(b)(3)(vi) and (b)(4)(iv) (concerning syndication transactions) of the Final Regulations; see also §1.168(k)-2(b)(3)(iii)(B)(4) of these proposed regulations (concerning de minimis uses of property).

To ensure that the additional first year depreciation deduction is reported on the acquiring group's consolidated return in circumstances like those described in Former Example 21, §1.168(k)-2(b)(3)(v)(C) of these proposed regulations (Proposed Consolidated Acquisition Rule) provides that, if a member of a consolidated group acquires depreciable property from another member of the same consolidated group (that is, the selling group) in a taxable transaction, and if the transferee member ceases to be a member of the selling group in a series of related transactions that includes the

property acquisition within 90 calendar days of the date of the property acquisition, then (1) the disposition and acquisition of the property are treated as occurring one day after the date on which the transferee member ceases to be a member of the selling group (Deconsolidation Date) for all Federal income tax purposes, and (2) the transferee member is treated as placing the depreciable property in service not earlier than one day after the Deconsolidation Date for purposes of claiming depreciation or the investment credit.

The Proposed Consolidated Acquisition Rule would ensure that the used property acquisition requirements, including the No Prior Use Requirement and the Related Party Requirement, are satisfied in cases similar to Former Example 21. With respect to the No Prior Use Requirement, because the proposed rule treats the transferee member as acquiring the property after it ceases to be a member of the selling group, the transferee member is not attributed the selling group's usage of the property under the Group Prior Use Rule. The Related Party Requirement and Component Member Requirements would be tested using the same analysis.

The Proposed Consolidated Acquisition Rule applies the same treatment for purposes of determining whether the transaction is covered by section 168(i)(7)(B)(ii). Therefore, because the acquisition is not treated as occurring between members of the same consolidated group, if the transferee member is eligible to claim the additional first year depreciation deduction, then section 168(i)(7)(B)(ii) will not apply to limit the amount of the deduction.

In order to allow the deduction to the appropriate party, the Proposed Consolidated Acquisition Rule also provides that the transferee member is treated as

placing the property in service not earlier than one day after the Deconsolidation Date for purposes of sections 167 and 168 and §§1.46-3(d) and 1.167(a)-11(e)(1). In so providing, the Treasury Department and the IRS intend to prohibit the transferee member from claiming the additional first year depreciation deduction on the selling group's consolidated return. The rule also prevents the transferee member from claiming regular depreciation or the investment credit with respect to the acquired property during the period after the transferee member acquires the property but before it leaves the selling group. Example 28 (that is, revised Former Example 21) in proposed §1.168(k)-2(b)(3)(vii)(BB) illustrates the application of the Proposed Consolidated Acquisition Rule to the acquisition of depreciable property by one member of a consolidated group from another member of the same consolidated group.

#### iv. Deemed Acquisitions of Depreciable Property Between Members of the Same Consolidated Group

Commenters have noted that issues similar to those in Former Example 21 also arise in the context of deemed acquisitions of property within a consolidated group resulting from an election under either section 338(h)(10) or section 336(e). The Treasury Department and the IRS have determined that deemed acquisitions of property should be treated the same as actual acquisitions of property. Thus, §1.168(k)-2(b)(3)(v)(D) of these proposed regulations provides a rule (Proposed Consolidated Deemed Acquisition Rule) that applies if (1) the transferee member acquires the stock of another member of the same group that holds depreciable property (target) in a qualified stock purchase or a qualified stock disposition for which a section 338 election or a section 336(e) election for a disposition described in §1.336-

2(b)(1), respectively, is made, and (2) the transferee member and target cease to be members of the consolidated group within 90 calendar days of the acquisition date (within the meaning of §1.338-2(c)(1)) or disposition date (within the meaning of §1.336-1(b)(8)) as part of the same series of related transactions that includes the acquisition. The Proposed Consolidated Deemed Acquisition Rule does not apply to qualified stock dispositions described in section 355(d)(2) or (e)(2) because the rules applicable to such dispositions do not treat a new target corporation as acquiring assets from an unrelated person. See §1.336-2(b)(2).

If the Proposed Consolidated Deemed Acquisition Rule applies, then (a) the acquisition date or disposition date, as applicable, is treated as the date that is one day after the date on which the transferee member and target cease to be members of the consolidated group (Deconsolidation Date) for all Federal income tax purposes, and (b) new target is treated as placing the depreciable property in service not earlier than one day after the Deconsolidation Date for purposes of sections 167 and 168 and §§1.46-3(d) and 1.167(a)-11(e)(1).

Without the proposed rule, new target might be treated as having a depreciable interest in the assets new target is deemed to acquire by virtue of the Group Prior Use Rule because old target, a member of the same consolidated group, had a depreciable interest in those assets. If applicable, the proposed rule prevents new target from being treated as having a depreciable interest in the assets by moving the acquisition date or disposition date to the day after the Deconsolidation Date. New target is therefore a member of the acquiring group at the time it is deemed to acquire the assets. Similar to the Proposed Consolidated Acquisition Rule, this deemed acquisition rule also provides

that the transferee member is treated as placing the property in service not earlier than one day after the Deconsolidation Date for purposes of sections 167 and 168 and §§1.46-3(d) and 1.167(a)-11(e)(1). Example 29 in proposed §1.168(k)-2(b)(3)(vii)(CC) illustrates the application of the rule to the deemed acquisition of depreciable property by one member of a consolidated group from another member of the same consolidated group pursuant to a section 338(h)(10) election.

Neither the Proposed Consolidated Acquisition Rule nor the Proposed Consolidated Deemed Acquisition Rule applies if the property that is acquired (or deemed acquired) is subsequently disposed of by the transferee member or new target, respectively, in a transaction that is part of the same series of related transactions as the actual or deemed acquisition of the property. For special rules governing the transfer of property in a series of related transactions, see §1.168(k)-2(b)(3)(iii)(C) of these proposed regulations. For special rules governing property placed in service and disposed of in the same taxable year, see §1.168(k)-2(g)(1).

### 3. Acquisition of Property

#### A. Definition of Binding Contract for Acquisition of Entity

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. Accordingly, these proposed regulations amend §1.168(k)-2 by adding paragraph (b)(5)(iii)(G) to provide that a contract to

acquire all or substantially all of the assets of a trade or business or to acquire an entity (for example, a corporation, a partnership, or a limited liability company) is binding if it is enforceable under State law against the parties to the contract. The presence of a condition outside the control of the parties, including, for example, regulatory agency approval, will not prevent the contract from being a binding contract. Further, the fact that insubstantial terms remain to be negotiated by the parties to the contract, or that customary conditions remain to be satisfied, does not prevent the contract from being a binding contract. This proposed rule also applies to a contract for the sale of the stock of a corporation that is treated as an asset sale as a result of an election under section 338.

#### B. Property Not Acquired Pursuant to a Written Binding Contract

The Treasury Department and the IRS also are aware that, in some cases, a taxpayer may acquire property that was not pursuant to a written binding contract. If such property is not self-constructed property, a qualified film, television, or live theatrical production, or a specified plant, these proposed regulations amend §1.168(k)-2 by adding paragraph (b)(5)(v) to provide that the acquisition date of property acquired pursuant to a contract that is not a written binding contract is the date on which the taxpayer 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 and designing, securing financing, exploring, or researching. This 10-percent proposed rule is the same as the safe harbor provided in §1.168(k)-2(b)(5)(iv)(B)(2) of the Final Regulations for determining the acquisition date of self-constructed property. This proposed rule



does not apply to the acquisition of a trade or business, or an entity. The Treasury Department and the IRS request comments on this proposed rule.

#### 4. Components

Multiple commenters to the August Proposed Regulations requested an election similar to the one provided in section 3.02(2)(b) of Rev. Proc. 2011-26 (2011-16 I.R.B. 664 (April 18, 2011)) for components acquired or self-constructed after September 27, 2017, of larger self-constructed property for which the manufacture, construction, or production of the larger self-constructed property begins before September 28, 2017.

The Treasury Department and the IRS have determined that it is appropriate to allow a taxpayer to elect to treat one or more components acquired or self-constructed after September 27, 2017, of certain larger self-constructed property as being eligible for the additional first year depreciation deduction under section 168(k). The larger self-constructed property must be qualified property under section 168(k)(2), as in effect before the enactment of the Act, for which the manufacture, construction, or production began before September 28, 2017. However, the election is not available for components of larger self-constructed property when such property is not eligible for any additional first year depreciation deduction under section 168(k) (for example, property described in section 168(k)(9) and placed in service by the taxpayer in any taxable year beginning after December 31, 2017, or qualified improvement property placed in service by the taxpayer after December 31, 2017). These proposed regulations amend §1.168(k)-2 by adding paragraph (c) to provide for this election. These proposed regulations also provide rules regarding installation costs and the determination of the basis attributable to the manufacture, construction, or production

before January 1, 2020, for longer production period property or certain aircraft property described in section 168(k)(2)(B) or (C). Additionally, these proposed regulations provide the time and manner of making the election, and examples to illustrate the proposed rules.

These proposed regulations also amend §1.168(k)-2(e)(1)(iii) to provide rules regarding the determination of the basis attributable to the manufacture, construction, or production before January 1, 2027, for longer production period property or certain aircraft property described in section 168(k)(2)(B) or (C).

Commenters to the August Proposed Regulations 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. 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). Property acquired before September 28, 2017, is eligible for the additional first year depreciation deduction provided by section 168(k) as in effect before the enactment of the Act provided such property is qualified property under section 168(k) as in effect before the enactment of the Act. However, if the taxpayer makes the election in proposed §1.168(k)-2(c), as described above, for components acquired or self-constructed after September 27, 2017, those components are eligible for the additional first year depreciation deduction under section 168(k). Such election,

however, does not apply to, among other things, property described in section 168(k)(9) and placed in service in a taxable year beginning after December 31, 2017.

#### 5. Special Rules: Mid-quarter Convention

The Treasury Department and the IRS are aware that taxpayers and practitioners have questioned whether the unadjusted depreciable 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. The Treasury Department and the IRS agree that a rule is necessary and that it should be consistent with the definition of depreciable basis in §1.168(d)-1(b)(4). Accordingly, the proposed regulations amend §1.168(k)-2 by adding paragraph (g)(11) to provide that in determining whether the mid-quarter convention applies for a taxable year under section 168(d)(3) and §1.168(d)-1, the depreciable basis, as defined in §1.168(d)-1(b)(4), for the taxable year the qualified property is placed in service by the taxpayer, is not reduced by the allowed or allowable additional first year depreciation deduction for that taxable year.

#### **Proposed Applicability Date**

These regulations are proposed to apply to qualified property placed in service or planted or grafted, as applicable, by the taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. These regulations also are proposed to apply to components acquired or self-constructed after September 27, 2017, of larger self-constructed property for which the manufacture, construction, or production begins before September 28, 2017, and that is qualified property under section 168(k)(2) as in

effect before the enactment of the Act and placed in service by the taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Pending the issuance of final regulations, a taxpayer may choose to rely on these proposed 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. Pending the issuance of final regulations, a taxpayer also may choose to rely on these proposed regulations, in their entirety, to components acquired or self-constructed after September 27, 2017, of larger self-constructed property for which the manufacture, construction, or production begins before September 28, 2017, and that is qualified property under section 168(k)(2) as in effect before the enactment of the Act and placed in service by the taxpayer during taxable years ending on or after September 28, 2017. If a taxpayer chooses to rely on these proposed regulations, the taxpayer must consistently apply all rules of these proposed regulations.

## **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 proposed 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 proposed regulations as significant under section 1(b) of the MOA. Accordingly, the OMB has reviewed these proposed regulations.

A. Background

i. Bonus Depreciation Generally

In general, section 168(k) allows taxpayers to immediately deduct some portion of investment in certain types of physical capital, what is colloquially known as bonus depreciation. The Act changed section 168(k) in several ways. Arguably most substantially, the Act increased the bonus percentage as it applies to property generally acquired after September 27, 2017, which accelerates depreciation deductions. 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). 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.

The regulations under §1.168(k)-2 generally provide structure and clarity for the implementation of section 168(k). However, Treasury and the IRS determined that there remained several outstanding issues requiring clarification that should be subject

to notice and comment. First, these proposed regulations address some ambiguities related to the operation of section 168(k)(9), which describes some property that is ineligible for bonus depreciation. Second, these proposed regulations create a de minimis rule which provides that a taxpayer will not be deemed to have had a prior depreciable interest in a property – and thus that property will be eligible for bonus depreciation in that taxpayer’s hands – if the taxpayer previously disposed of that property within 90 days of the date on which that property was placed in service. Third, these proposed regulations clarify the interpretation of an example in the August Proposed Regulations regarding an asset acquisition as part of a sale of a member of a controlled group from one group to another. Fourth, these proposed regulations modify the treatment of series of related transactions. Finally, these proposed regulations provide that certain components of larger self-constructed property can be eligible for the increased bonus depreciation percentage even if the construction of such larger self-constructed property began before September 28, 2017.

#### B. No-action Baseline

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

#### C. Economic Analysis of NPRM

This section describes the main provisions of these proposed regulations and provides a qualitative economic analysis of each one.

##### i. Property Excluded from Bonus Depreciation by Section 168(k)(9)

As discussed above, section 168(k)(9) provides that property used by certain businesses is not eligible for bonus depreciation. These businesses include certain rate-regulated utilities and motor vehicle dealerships with floor plan financing indebtedness.

These proposed regulations first clarify that those taxpayers that lease property to such businesses described by section 168(k)(9) may claim bonus depreciation, so long as other requirements of section 168(k) are met. This approach broadly follows the existing normalization rules (which provide generally for the reconciliation of tax income and book income for regulatory purposes for utilities), which provides that lessors to public utilities are not bound by such rules so long as they themselves are not a public utility. The Treasury Department and the IRS project that this guidance will be easy for taxpayers to interpret and comply with. Additionally, this decision allows businesses to receive some share of the economic benefit of section 168(k). To the extent that lessors can claim bonus depreciation, it is plausible that the market-clearing lease price for such assets will fall, potentially enabling some expansions of output and contributing to economic growth.

These proposed regulations next clarify which businesses fall under the umbrella of section 168(k)(9)(A) (utilities) and section 168(k)(9)(B) (dealerships with floor plan financing indebtedness). For utilities, these proposed regulations clarify that the “primary use” of an item described in the Code is consistent with how primary use is determined in existing regulations under section 167. This application should be familiar to taxpayers, and thus relatively easy to comply with.

The statutory language of section 168(k)(9)(B) is somewhat more ambiguous, and thus more substantive clarifications were necessary. First, section 168(k)(9)(B) provides that dealerships with floor plan financing indebtedness are ineligible for bonus depreciation “if the floor plan financing interest was taken into account under [section 163(j)(1)(C)].” These proposed regulations clarify that such interest is in fact “taken into account” only if the firm in fact received a benefit from section 163(j)(1)(C) – i.e., if total business interest expense (including floor plan financing interest) exceeds business interest income plus 30 percent of adjusted taxable income. This decision allows more firms to claim bonus depreciation than if the Treasury Department and the IRS had made the opposite interpretation (deeming all dealerships with floor plan financing interest to be ineligible for bonus depreciation, regardless of whether the firm received a benefit from section 163(j)(1)(C)).

The Treasury Department and the IRS have undertaken an analysis of the investment effects of this provision, under the assumption that 10 to 50 percent of affected taxpayers would have come to the opposite interpretation in the absence of the proposed regulations. Using tax return data and parameters from the literature on the effect of bonus depreciation on investment, this analysis has found that this provision would increase investment by an annual maximum of \$20 to \$90 million, although this range would likely decrease over time as uncertainty over the interpretation of the statute is resolved. Additionally, these proposed regulations will resolve a substantial compliance uncertainty facing these taxpayers.

An additional ambiguity in section 168(k)(9)(B) pertains to the length of time that the section applies to a given firm. The section refers to a “trade or business that has



had floor plan financing indebtedness ... if the floor plan financing interest related to such indebtedness was taken into account under [section 163(j)(1)(C)]”. Consider a firm (Example A) that received a benefit from section 163(j)(C)(1) in tax year 2018 (meaning that its interest deduction would have been smaller if not for section 163(j)(C)(1)) but not in tax year 2019 or any other later year. One interpretation of the statute would deem that firm forever ineligible for bonus depreciation, in 2019 and later. The Treasury Department and the IRS came to the opposite conclusion and deemed that section 168(k)(9)(B) is determined on an annual basis: for example, the firm in Example A of this part of the Special Analysis section would not be eligible for bonus depreciation in 2018, but so long as the other requirements were met, it would be eligible for bonus depreciation in 2019. As with the interpretation of “taken into account,” this interpretation enables more firms to be eligible for bonus depreciation in more years, potentially increasing investment by such firms. The Treasury Department and the IRS expect that some taxpayers would have come to a different conclusion regarding the interpretation of this timing in the absence of these proposed regulations. Therefore, this provision could also have some economic effects. The Treasury Department and the IRS engaged in an analysis on these effects based on historical tax data, parameter values from the economic literature for the effect of bonus depreciation on investment, and assumptions regarding taxpayer interpretations in the absence of these proposed regulations. The result of this analysis projects that this provision will cause investment to increase in this industry by no greater than \$55 million in any year, and approximately \$25 million per year on average over the period from 2019 to 2028. The Treasury Department and the IRS additionally project that some share of this

increased investment will reduce investment in other industries through crowd-out effects.

Importantly, the estimated effect of this provision interacts substantially with the rule that floor plan financing is “taken into account” only if the firm in fact received a benefit from section 163(j)(1)(C). In the absence of the proposed regulations, the Treasury Department and the IRS project that some share of taxpayers in this industry would have interpreted section 168(k)(9)(B) as rendering them ineligible for bonus depreciation in substantially all circumstances. Therefore, the effect of both provisions together is less than the sum of each of the provisions considered independently. In total, the Treasury Department and the IRS have determined that the effect of both rules related to section 168(k)(9)(B), when considered together, would have a maximum annual effect on investment in the range of \$65 million to \$90 million and declining over time as uncertainty over the interpretation of the statute is resolved.

ii. Prior Depreciable Interest

In general, to be eligible for bonus depreciation, a given property may not have been owned by the same firm in the past. This requirement was instituted by Congress in order to prevent “churning” of assets, whereby a firm could sell and soon thereafter repurchase the same asset in order to claim the 100 percent deduction. The August Proposed Regulations defined “ownership” for this purpose as having a prior depreciable interest. Section 1.168(k)-2 finalizes this interpretation. These proposed regulations introduce an exception, providing that a taxpayer does not have a depreciable interest in a given property if the taxpayer disposed of the property within 90 days of the initial date when the property was placed in service (so long as the asset

is not repurchased and placed in service again within the same taxable year). The Treasury Department and the IRS primarily instituted this rule in order to coordinate with the syndication transaction rules of section 168(k)(E)(2)(iii). The Treasury Department and the IRS do not anticipate substantial economic effects of this provision. Nevertheless, it will generally have the effect of causing more property to be eligible for bonus depreciation (increasing incentives to invest), while minimizing incentives for wasteful churning of assets.

Furthermore, these proposed regulations clarify that partners in a partnership hold a depreciable interest in the property held by that partnership, and that the share of the property to which this applies equals the partner's share of the depreciation deductions of the partnership over a certain period. The Treasury Department and the IRS have determined that this provides an accurate reflection of the partner's prior depreciable interest in the property, and therefore aligns tax consequences and economic consequences, which is generally favorable for economic efficiency. However, as is the case with the "prior use" rules generally, the Treasury Department and the IRS do not project this provision to substantially affect behavior.

### iii. Group Prior Use Rule

These proposed regulations clarify several aspects of the "Group Prior Use Rule." Under that rule, all members of a consolidated group are treated as having had a depreciable interest in a property if any member of the consolidated group had such a depreciable interest. First, these proposed regulations clarify that the rule ceases to be in effect once the consolidated group terminates as a result of joining another consolidated group. Second, these proposed regulations clarify that the Group Prior

Use Rule does not apply to a corporation after it deconsolidates from the consolidated group, so long as that corporation did not in fact own that property. As is the case with the prior use rules generally, the Treasury Department and the IRS do not anticipate large economic effects as a result of this section of these proposed regulations.

iv. Purchases of Assets as Part of Acquisition of Entire Business

Additionally, these proposed regulations clarify the proper procedure for certain purchases of assets by a given corporation from a related party that are a part of an integrated plan involving the selling of that corporation from one group to another. Specifically, these proposed regulations provide that the deduction for bonus depreciation is allowed in such circumstances, and should be claimed by the acquiring group. These proposed regulations provide for a similar treatment in the case of deemed acquisitions in the case of an election under section 338(h)(10) or section 336(e). These rules cause the tax treatment to reflect the economic reality, in which the acquiring group is bearing the economic outlay of the asset purchase, and that acquiring group had no economic prior depreciable interest. By aligning the tax consequences with the economic allocations, this treatment minimizes potential distortions caused by the anti-churning rules.

v. Component Rule Election

In 2010, Congress increased the bonus percentage from 50 percent to 100 percent for property placed in service between September 9, 2010 and December 31, 2011. In 2011, the IRS issued Revenue Procedure 2011-26 to allow taxpayers to elect to have the 100 percent bonus rate apply to components of larger self-constructed property whose construction began before September 9, 2010, so long as (1) the

components were acquired (or self-constructed) after that date and (2) the larger self-constructed property itself qualifies for bonus depreciation generally. These proposed regulations provide an analogous rule, replacing September 9, 2010 with September 27, 2017. This provision will allow more property to qualify for 100 percent bonus depreciation. Furthermore, this provision provides neutrality between taxpayers who acquire distinct, smaller pieces of depreciable property and those taxpayers that invest a similar amount in fewer, larger pieces of depreciable property whose construction takes place over a longer period of time. By treating similar taxpayers (and similar choices) similarly, this rule enhances economic efficiency by minimizing tax-related distortions. However, the Treasury Department and the IRS project these rules to have only a modest effect on future economic decisions. These rules affect only taxpayers (1) that acquire (or self-construct) components after the date of enactment of these proposed regulations and (2) for whom the construction of the larger self-constructed property began prior to September 28, 2017 (approximately 21 months ago). The Treasury Department and the IRS expect relatively few taxpayers to be affected by this provision going forward.

vi. Series of Related Transactions

The August Proposed Regulations provided that, in a series of related transactions, the relationship between the transferor and transferee of an asset was determined only after the final transaction in the series (the “Series of Related Transaction Rule”). Commenters had expressed confusion regarding whether this applies to testing whether parties are related under section 179(d)(2), or whether it applies more broadly (e.g., in determining whether the taxpayer had a prior depreciable

interest). These proposed regulations clarify that this Series of Related Transaction Rule is intended only to test the relatedness of two parties.

These proposed regulations further revise the Series of Related Transaction Rule to address its application in various situations. Under these proposed regulations, the relatedness is tested after each step of the series of related transactions, with the substantial exception that any intermediary (i.e., a taxpayer other than the original transferor or ultimate transferee) is disregarded so long as that intermediary (1) never places the property in service or (2) disposes of the property in the same taxable year in which it was placed in service. This would tend to eliminate the benefit of the Series of Related Transaction Rule in cases where intermediate transferees maintained use of the property for a non-trivial length of time. The Treasury Department and the IRS project that this interpretation will prevent abuse. The Treasury Department and the IRS do not predict substantial economic effects of this provision.

vii. Miscellaneous

Lastly, these proposed regulations put forward rules to the extent existing regulations apply in slightly new contexts. In particular, these proposed regulations clarify when a binding contract is in force to acquire all or substantially all the assets of a trade or business. Additionally, consistent with the rules of §1.168(d)-1(b)(4), these proposed regulations provide that, for the purpose of determining whether the mid-quarter convention applies, depreciable basis is not reduced by the amount of bonus depreciation. The Treasury Department and the IRS do not anticipate large economic effects of these clarifications, though the additional clarity of these regulations will likely reduce compliance burdens.

## II. Paperwork Reduction Act

The collection of information in these proposed regulations are in proposed §1.168(k)-2(c). The collection of information in proposed §1.168(k)-2(c) is an election that a taxpayer may make to treat one or more components acquired or self-constructed after September 27, 2017, of certain larger self-constructed property as being eligible for the 100-percent additional first year depreciation deduction under section 168(k). The larger self-constructed property must be qualified property under section 168(k)(2) as in effect before the enactment of the Act and for which the manufacture, construction, or production began before September 28, 2017. The election is made by attaching a statement to a Federal income tax return indicating that the taxpayer is making the election under proposed §1.168(k)-2(c) and whether the taxpayer is making the election for all or some of the components described in proposed §1.168(k)-2(c).

For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA), the reporting burden associated with proposed §1.168(k)-2(c) 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 (for OMB control numbers, see chart at the end of this part II of this Special Analysis section). The estimate for the number of impacted filers with respect to the collection of information described in this part is 0 to 137,000 respondents. Historical data was not available to directly estimate the number of impacted filers. This estimate assumes that no more than 10 percent of income tax return filers with a nonzero entry on Form 4562 Line 14 (additional first year depreciation deduction) will make this election (5 percent in the case of filers of Form 1040 series). 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(c) Election for components of larger self-constructed property for which the manufacture, construction, or production begins before September 28, 2017	0-137,000	Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series

Source: IRS:RAAS:KDA (CDW 6-1-19)

The current status of the PRA submissions related to the tax forms that will be revised as a result of the information collections in the section 168(k) 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 for the OMB control numbers below are aggregate amounts that relate to the entire package of forms associated with the applicable OMB control number and will in the future include, but not isolate, the estimated burden of the tax forms 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 above, the Treasury Department and the IRS estimate PRA burdens on a taxpayer-type basis rather than a provision-specific basis. Those estimates would capture changes made by the Act, the final regulations under section 168(k), and those that arise out of discretionary authority exercised in these proposed 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 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 Number(s)	Status
Form 1040	Individual (NEW Model)	1545-0074	Published in the <b>Federal Register</b> on 7/20/18. Public Comment period closed on 9/18/18.
	Link: <a href="https://www.federalregister.gov/documents/2018/07/20/2018-15627/proposed-collection-comment-request-for-regulation-project">https://www.federalregister.gov/documents/2018/07/20/2018-15627/proposed-collection-comment-request-for-regulation-project</a>		
Form 1041	Trusts and estates	1545-0092	Published in the <b>Federal Register</b> on 4/4/18. Public Comment period closed on 6/4/18.
	Link: <a href="https://www.federalregister.gov/documents/2018/04/04/2018-06892/proposed-collection-comment-request-for-form-1041">https://www.federalregister.gov/documents/2018/04/04/2018-06892/proposed-collection-comment-request-for-form-1041</a>		
Forms 1065 and 1120	Business (NEW Model)	1545-0123	Published in the <b>Federal Register</b> on 10/8/18. Public Comment period closed on 12/10/18.
	Link: <a href="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">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</a>		

### III. Regulatory Flexibility Act

It is hereby certified that these proposed 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 burden in proposed §1.168(k)-2(c) generally affects taxpayers that elect to have the 100 percent additional first year depreciation deduction apply to components that are acquired or self-constructed after September 27, 2017, of depreciable property for which the manufacture, construction, or production began before September 28, 2017, and was completed generally before January 1, 2020. The election is made by attaching a statement to a Federal income tax return indicating that the taxpayer is making the election under proposed §1.168(k)-2(c) and whether the taxpayer is making this election for all or some of the components described in §1.168(k)-2(c).

For purposes of the PRA, the Treasury Department and the IRS estimate that there are 0 to 181,500 respondents of all sizes that are likely to be impacted by this collection of information. Only a small proportion 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 proposed §1.168(k)-2(c) to be the following:

Form	Gross receipts of \$25 million or less	Gross receipts over \$25 million
Form 1040	0-12,000	0-32,500

	Respondents (estimated)	Respondents (estimated)
Form 1065	0-1,250  Respondents (estimated)	0-35,000  Respondents (estimated)
Form 1120	0-1,750  Respondents (estimated)	0-11,000  Respondents (estimated)
Form 1120S	0-2,500  Respondents (estimated)	0-41,000  Respondents (estimated)
TOTAL	0-29,500  Respondents (estimated)	0-152,000  Respondents (estimated)

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Source: IRS:RAAS:KDA (CDW 6-1-19)

Regardless of the number of small entities potentially affected by these proposed regulations, the Treasury Department and the IRS have concluded that proposed §1.168(k)-2(c) will not have a significant economic impact on a substantial number of small entities. As a result of all changes in these proposed regulations, the Treasury Department and the IRS estimate that individual taxpayers who have gross receipts of \$25 million or less and experience an increase in burden will incur an average increase of 0 to 3 hours, and business taxpayers that have gross receipts of \$25 million or less and experience an increase in burden will incur an average increase of 0 to 2 hours (Source: IRS:RAAS (8-28-2019)). Because the election in proposed §1.168(k)-2(c) is one of several changes in these proposed regulations, the Treasury Department and the IRS expect the average increase in burden to be less for the collection of information in proposed §1.168(k)-2(c) than the average increase in burden in the preceding sentence. The Treasury Department and the IRS also note that many taxpayers with gross receipts of \$25 million or less may experience a reduction in burden as a result of all changes in these proposed regulations.

Additionally: (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). Therefore, the Treasury Department and the IRS have determined that a substantial number of small entities will not be subject to these proposed regulations. Finally, proposed §1.168(k)-2(c) applies only if the taxpayer chooses to make an election to a more favorable rule. Consequently, the Treasury Department and the IRS hereby certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

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

#### 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 proposed 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 proposed 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.

#### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at <https://www.regulations.gov> or upon request.

A public hearing is scheduled on November 13, 2019, beginning at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For more information about having your name placed on the building access list to

attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by October 23, 2019. Submit a signed paper or electronic copy of the outline as prescribed in this preamble under the **ADDRESSES** heading. A period of 10 minutes will be allotted to each person making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

If no outline of the topics to be discussed at the hearing is received by October 23, 2019, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

### **Drafting Information**

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

### **Partial Withdrawal of Proposed Regulations**

Under the authority of 26 U.S.C. 7805 and 26 U.S.C. 1502, §1.168(k)-2(b)(3)(iii)(B)(3)(i) through (iii), §1.168(k)-2(b)(3)(iii)(C), and §1.168(k)-2(b)(3)(vi) Examples 18 through 22 of the notice of proposed rulemaking (REG-104397-18) published in the **Federal Register** on August 8, 2018 (83 FR 39292) are withdrawn.



## Statement of Availability

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

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Proposed Amendments to the Regulations

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

### PART 1--INCOME TAXES

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

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

\* \* \* \* \*

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

\* \* \* \* \*

Par. 2. Section 1.168(k)-0 is amended by revising the entries for §1.168(k)-2(b)(3)(iii)(C), (b)(3)(v), (b)(5)(iii)(G), (b)(5)(v), (c), and (g)(11); and adding an entry for §1.168(k)-2(h)(4) to read as follows:

§1.168(k)-0 Table of contents.

\* \* \* \* \*

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

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iii) \* \* \*

(C) Special rules for a series of related transactions.

\* \* \* \* \*

(v) Application to members of a consolidated group.

\* \* \* \* \*

(5) \* \* \*

(iii) \* \* \*

(G) Acquisition of a trade or business or an entity.

\* \* \* \* \*

(v) Determination of acquisition date for property not acquired pursuant to a written binding contract.

\* \* \* \* \*

(c) Election for components of larger self-constructed property for which the manufacture, construction, or production begins before September 28, 2017.

(1) In general.

(2) Eligible larger self-constructed property.

(i) In general.

(ii) Exceptions.

(3) Eligible components.

(i) In general.

(ii) Acquired components.

(iii) Self-constructed components.

(4) Special rules.

(i) Installation costs.

(ii) Property described in section 168(k)(2)(B).

(5) Computation of additional first year depreciation deduction.

(i) Election is made.

(ii) Election is not made.

(6) Time and manner for making election.

(i) Time for making election.

(ii) Manner of making election.

(7) Examples.

\* \* \* \* \*

(g) \* \* \*

(11) Mid-quarter convention.

(h) \* \* \*

(4) Regulation project REG-106808-19.

Par. 3. Section 1.168(k)-2 is amended by:

1. At the end of paragraph (a)(1), removing “.” and adding “, except as provided in paragraph (c) of this section.” in its place;

2. Revising paragraph (b)(2)(ii)(F);

3. Adding three sentences at the end of paragraph (b)(2)(ii)(G);
4. Adding Examples 6, 7, and 8 in paragraphs (b)(2)(iii)(F), (G), and (H), respectively;
5. Adding paragraphs (b)(3)(iii)(B)(4) and (5);
6. Revising paragraph (b)(3)(iii)(C);
7. Revising paragraph (b)(3)(v);
8. Adding Examples 25 through 34 in paragraphs (b)(3)(vii)(Y) through (HH), respectively;
9. Revising the last sentence in paragraph (b)(5)(ii)(A);
10. In the first sentence in paragraph (b)(5)(iii)(A), removing the word “A” at the beginning of the sentence and adding “Except as provided in paragraph (b)(5)(iii)(G) of this section, a” in its place;
11. In the first sentence in paragraph (b)(5)(iii)(B), removing the word “A” at the beginning of the sentence and adding “Except as provided in paragraph (b)(5)(iii)(G) of this section, a” in its place;
12. Revising paragraph (b)(5)(iii)(G);
13. In the penultimate sentence in paragraph (b)(5)(iv)(C)(1), removing “.” at the end of the sentence and adding “, except as provided in paragraph (c) of this section.” in its place;
14. In the penultimate sentence in paragraph (b)(5)(iv)(C)(2), removing “.” at the end of the sentence and adding “, except as provided in paragraph (c) of this section.” in its place;
15. Revising paragraph (b)(5)(v);

16. Revising the second sentence in introductory paragraph (b)(5)(viii);
17. Revising paragraph (c);
18. Adding two sentences at the end of paragraph (e)(1)(iii);
19. Revising paragraph (g)(11);
20. In introductory paragraph (h)(1), removing “paragraphs (h)(2) and (3)” and adding “paragraphs (h)(2), (3), and (4)” in its place; and
21. Adding paragraph (h)(4).

The additions and revisions read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(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. For purposes of section 168(k)(9)(A) and this paragraph (b)(2)(ii)(F), the term primarily used has the same meaning as that term is used in §1.167(a)-11(b)(4)(iii)(b) and (e)(3)(iii) for classifying property. This paragraph (b)(2)(ii)(F) does not apply to property that is leased to a trade or business described in section 163(j)(7)(A)(iv) by a lessor’s trade or business that is not described in section 163(j)(7)(A)(iv) for the taxable year; or

(G) \* \* \* Solely for purposes of section 168(k)(9)(B) and this paragraph (b)(2)(ii)(G), floor plan financing interest is not taken into account for the taxable year by a trade or business that has had floor plan financing indebtedness if the sum of the amounts calculated under section 163(j)(1)(A) and (B) for the trade or business for the taxable year equals or exceeds the business interest, as defined in section 163(j)(5), of the trade or business for the taxable year (which includes floor plan financing interest). If the trade or business has taken floor plan financing interest into account pursuant to this paragraph (b)(2)(ii)(G) for a taxable year, this paragraph (b)(2)(ii)(G) applies to any property placed in service by that trade or business in that taxable year. This paragraph (b)(2)(ii)(G) does not apply to property that is leased to a trade or business that has had floor plan financing indebtedness by a lessor's trade or business that has not had floor plan financing indebtedness during the taxable year or that has had floor plan financing indebtedness but did not take into account floor plan financing interest for the taxable year pursuant to this paragraph (b)(2)(ii)(G).

(iii) \* \* \*

(F) Example 6. In 2019, a financial institution buys new equipment for \$1 million and then leases this equipment to a lessee that primarily uses the equipment in a trade or business described in section 163(j)(7)(A)(iv). The financial institution is not described in section 163(j)(7)(A)(iv). As a result, paragraph (b)(2)(ii)(F) of this section does not apply to this new equipment. Assuming all other requirements are met, the financial institution's purchase price of \$1 million for the new equipment qualifies for the additional first year depreciation deduction under this section.

(G) Example 7. In 2019, E, an automobile dealer, buys new computers for \$50,000 for use in its trade or business of selling automobiles. For purposes of section 163(j), E has the following for 2019: \$1,000 of adjusted taxable income, \$40 of business interest income, \$400 of business interest (which includes \$100 of floor plan financing interest). The sum of the amounts calculated under section 163(j)(1)(A) and (B) for E for 2019 is \$340 ( $\$40 + (\$1,000 \times 30 \text{ percent})$ ). E's business interest, which includes floor plan financing interest, for 2019 is \$400. As a result, E's floor plan financing interest is taken into account by E for 2019 pursuant to paragraph (b)(2)(ii)(G)

of this section. Accordingly, E's purchase price of \$50,000 for the computers does not qualify for the additional first year depreciation deduction under this section.

(H) Example 8. The facts are the same as in Example 7 in paragraph (b)(2)(iii)(G) of this section. In 2020, E buys new copiers for \$30,000 for use in its trade or business of selling automobiles. For purposes of section 163(j), E has the following for 2020: \$1,300 of adjusted taxable income, \$40 of business interest income, \$400 of business interest (which includes \$100 of floor plan financing interest). The sum of the amounts calculated under section 163(j)(1)(A) and (B) for E for 2020 is \$430 (\$40 + (\$1,300 x 30 percent)). E's business interest, which includes floor plan financing interest, for 2020 is \$400. As a result, E's floor plan financing interest is not taken into account by E for 2020 pursuant to paragraph (b)(2)(ii)(G) of this section. Assuming all other requirements are met, E's purchase price of \$30,000 for the copiers qualifies for the additional first year depreciation deduction under this section.

(3) \* \* \*

(iii) \* \* \*

(B) \* \* \*

(4) De minimis use of property. If a taxpayer acquires and places in service property, the taxpayer or a predecessor did not previously have a depreciable interest in the property, the taxpayer disposes of the property to an unrelated party within 90 calendar days after the date the property was originally placed in service by the taxpayer, without taking into account the applicable convention, and the taxpayer reacquires and again places in service the property, the taxpayer's depreciable interest in the property during that 90-day period is not taken into account for determining whether the property was used by the taxpayer or a predecessor at any time prior to its reacquisition 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)(4) does not apply if the taxpayer reacquires and again places in service the property during the same taxable year the taxpayer disposed of the property. For purposes of this paragraph (b)(3)(iii)(B)(4), an unrelated

party is a person not described in section 179(d)(2)(A) or (B), and §1.179-4(c)(1)(ii) or (iii), or (c)(2).

(5) Partner's prior depreciable interest in property held by partnership. Solely for purposes of applying paragraphs (b)(3)(iii)(A)(1) and (b)(3)(iii)(B)(1) and (2) of this section, a person is treated as having a depreciable interest in a portion of property prior to the person's acquisition of the property if the person was a partner in a partnership at any time the partnership owned the property. For purposes of the preceding sentence, the portion of property that a partner is treated as having a depreciable interest in is equal to the total share of depreciation deductions with respect to the property allocated to the partner as a percentage of the total depreciation deductions with respect to that property allocated to all partners during the current calendar year and five calendar years immediately prior to the partnership's current placed-in-service year of the property. If the person was not a partner in the partnership for this entire period, or if the partnership did not own the property for the entire period, only the period during which the person was a partner and the partnership owned the property is taken into account for purposes of determining a partner's share of depreciation deductions.

(C) Special rules for a series of related transactions--(1) In general. Solely for purposes of paragraph (b)(3)(iii) of this section, the relationship between parties under section 179(d)(2)(A) or (B) in a series of related transactions is tested immediately after each step in the series, and between the original transferor and the ultimate transferee immediately after the last transaction in the series. A series of related transactions may include, for example, a transfer of partnership assets followed by a transfer of an

interest in the partnership that owned the assets; or a disposition of property and disposition, directly or indirectly, of the transferor or transferee of the property.

(2) Special rules--(i) Property placed in service and disposed of in same taxable year or property not placed in service. Any party in a series of related transactions that is neither the original transferor nor the ultimate transferee is disregarded (disregarded party) for purposes of testing the relationships under paragraph (b)(3)(iii)(C)(1) of this section if the party places in service and disposes of the depreciable property subject to the series, other than in a transaction described in paragraph (g)(1)(iii) of this section, during the party's same taxable year or if the party does not place in service the depreciable property subject to the series for use in the party's trade or business or production of income. In this case, the relationship is tested between the party from which the disregarded party acquired the depreciable property and the party to which the disregarded party disposed of the depreciable property. If the series has consecutive disregarded parties, the relationship is tested between the party from which the first disregarded party acquired the depreciable property and the party to which the last disregarded party disposed of the depreciable property. The rules for testing the relationships in paragraph (b)(3)(iii)(C)(1) of this section continue to apply for the other transactions in the series and for the last transaction in the series.

(ii) All section 168(i)(7) transactions. This paragraph (b)(3)(iii)(C) does not apply if all transactions in a series of related transactions are described in paragraph (g)(1)(iii) of this section (section 168(i)(7) transactions in which property is transferred in the same taxable year that the property is placed in service by the transferor).



(iii) One or more section 168(i)(7) transactions. Any step in a series of related transactions that is neither the original step nor the ultimate step is disregarded (disregarded step) for purposes of testing the relationships under paragraph (b)(3)(iii)(C)(1) of this section if the step is a transaction described in paragraph (g)(1)(iii) of this section. In this case, the relationship is not tested between the transferor and transferee of that transaction. Instead, the relationship is tested between the transferor in the disregarded step and the party to which the transferee in the disregarded step disposed of the depreciable property, and the transferee in the disregarded step and the party to which the transferee in the disregarded step disposed of the depreciable property. If the series has consecutive disregarded steps, the relationship is tested between the transferor in the first disregarded step and the party to which the transferee in the last disregarded step disposed of the depreciable property, and the transferee in the last disregarded step and the party to which the transferee in the last disregarded step disposed of the depreciable property. The rules for testing the relationships in paragraph (b)(3)(iii)(C)(1) of this section continue to apply for the other transactions in the series and for the last transaction in the series.

(iv) Syndication transaction. This paragraph (b)(3)(iii)(C) does not apply to a syndication transaction described in paragraph (b)(3)(vi) of this section.

(v) Application of paragraph (g)(1) of this section. Paragraph (g)(1) of this section applies to each step in a series of related transactions.

\* \* \* \* \*

(v) Application to members of a consolidated group--(A) In general. Solely for purposes of applying paragraph (b)(3)(iii)(A)(1) of this section, if a member of a

consolidated group, as defined in §1.1502-1(h), acquires depreciable property in which the group had a depreciable interest at any time prior to the member's acquisition of the property, the member is treated as having a depreciable interest in the property prior to the acquisition. For purposes of this paragraph (b)(3)(v)(A), a consolidated group is treated as having a depreciable interest in property during the time any current or previous member of the group had a depreciable interest in the property while a member of the group.

(B) Certain acquisitions pursuant to a series of related transactions. Solely for purposes of applying paragraph (b)(3)(v)(A) of this section, if a series of related transactions includes one or more transactions in which property is acquired by a member of a consolidated group, and one or more transactions in which a corporation that had a depreciable interest in the property, determined without regard to the application of paragraph (b)(3)(v)(A) of this section, becomes a member of the group, the member that acquires the property is treated as having a depreciable interest in the property prior to the time of its acquisition.

(C) Sale of depreciable property to a member that leaves the group. Except as otherwise provided in paragraph (b)(3)(v)(E) of this section, if a member of a consolidated group (transferee member) acquires from another member of the same group (transferor member) depreciable property in an acquisition meeting the requirements of paragraph (b)(3)(iii)(A) of this section without regard to section 179(d)(2)(A) or (B) or paragraph (b)(3)(v)(A) of this section, and if, as part of the same series of related transactions that includes the acquisition, the transferee member

ceases to be a member of the consolidated group within 90 calendar days of the date of the acquisition, then--

(1) The transferor member is treated as disposing of, and the transferee member is treated as acquiring, the depreciable property one day after the date on which the transferee member ceases to be a member of the consolidated group (Deconsolidation Date) for all Federal income tax purposes; and

(2) The transferee member is treated as placing the depreciable property in service not earlier than one day after the Deconsolidation Date for purposes of sections 167 and 168 and §§1.46-3(d) and 1.167(a)-11(e)(1).

(D) Deemed sales of depreciable property under section 338 or 336(e) to a member that leaves the group. This paragraph (b)(3)(v)(D) applies only if a member of a consolidated group (transferee member) acquires the stock of another member of the same group that holds depreciable property (target) in either a qualified stock purchase for which a section 338 election is made or a qualified stock disposition described in §1.336-2(b)(1) for which a section 336(e) election is made. Except as otherwise provided in paragraph (b)(3)(v)(E) of this section, if the target would be eligible for the additional first year depreciation deduction under this section with respect to the depreciable property without regard to paragraph (b)(2)(v)(A) of this section, and if the transferee member and the target cease to be members of the group within 90 calendar days of the acquisition date, within the meaning of §1.338-2(c)(1), or disposition date, within the meaning of §1.336-1(b)(8), as part of the same series of related transactions that includes the acquisition, then--

(1) The acquisition date or disposition date, as applicable, is treated as the date that is one day after the Deconsolidation Date for all Federal income tax purposes; and

(2) New target is treated as placing the depreciable property in service not earlier than one day after the Deconsolidation Date for purposes of sections 167 and 168 and §§1.46-3(d) and 1.167(a)-11(e)(1).

(E) Disposition of depreciable property pursuant to the same series of related transactions. Paragraph (b)(3)(v)(C) of this section does not apply if, following the acquisition of depreciable property, the transferee member disposes of such property pursuant to the same series of related transactions that includes the property acquisition. Paragraph (b)(3)(v)(D) of this section does not apply if, following the deemed acquisition of depreciable property, the target disposes of such property pursuant to the same series of related transactions that includes the deemed acquisition. See paragraph (b)(3)(iii)(C) of this section for rules regarding the transfer of property in a series of related transactions. See also paragraph (g)(1) of this section for rules regarding property placed in service and disposed of in the same taxable year.

\* \* \* \* \*

(vii) \* \* \*

(Y) Example 25. (1) On September 5, 2017, Y, a calendar-year taxpayer, acquires and places in service a new machine (Machine #1), and begins using Machine #1 in its manufacturing trade or business. On November 1, 2017, Y sells Machine #1 to Z, then Z leases Machine #1 back to Y for 4 years, and Y continues to use Machine #1 in its manufacturing trade or business. The lease agreement contains a purchase option provision allowing Y to buy Machine #1 at the end of the lease term. On November 1, 2021, Y exercises the purchase option in the lease agreement and buys Machine #1 from Z. The lease between Y and Z for Machine #1 is a true lease for Federal tax purposes.

(2) Because Y, a calendar-year taxpayer, placed in service and disposed of Machine #1 during 2017, Machine #1 is not eligible for the additional first year depreciation deduction for Y pursuant to §1.168(k)-1(g)(1)(i).

(3) The use of Machine #1 by Y prevents Z from satisfying the original use requirement of paragraph (b)(3)(ii) of this section. However, Z'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, Z's purchase price of Machine #1 qualifies for the additional first year depreciation deduction for Z under this section.

(4) During 2017, Y sold Machine #1 within 90 calendar days of placing in service Machine #1. Pursuant to paragraph (b)(3)(iii)(B)(4) of this section, Y's depreciable interest in Machine #1 during that 90-day period is not taken into account for determining whether Machine #1 was used by Y or a predecessor at any time prior to its reacquisition by Y on November 1, 2021. Accordingly, assuming all other requirements are met, Y's purchase price of Machine #1 on November 1, 2021, qualifies for the additional first year depreciation deduction for Y under this section.

(Z) Example 26. Parent owns all of the stock of B and C, which are members of the Parent consolidated group. C has a depreciable interest in Equipment #1. During 2018, C sells Equipment #1 to B. Prior to this acquisition, B never had a depreciable interest in Equipment #1. B's acquisition of Equipment #1 does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section for two reasons. First, B and C are related parties within the meaning of section 179(d)(2)(B) and §1.179-4(c)(2)(iii). Second, pursuant to paragraph (b)(3)(v)(A) of this section, B is treated as previously having a depreciable interest in Equipment #1 because B is a member of the Parent consolidated group and C, while a member of the Parent consolidated group, had a depreciable interest in Equipment #1. Accordingly, B's acquisition of Equipment #1 is not eligible for the additional first year depreciation deduction.

(AA) Example 27--(1) Facts. Parent owns all of the stock of D and E, which are members of the Parent consolidated group. D has a depreciable interest in Equipment #2. No other current or previous member of the Parent consolidated group has ever had a depreciable interest in Equipment #2 while a member of the Parent consolidated group. During 2018, D sells Equipment #2 to BA, a person not related, within the meaning of section 179(d)(2)(A) or (B) and §1.179-4(c), to any member of the Parent consolidated group. In an unrelated transaction during 2019, E acquires Equipment #2 from BA or another person not related to any member of the Parent consolidated group within the meaning of section 179(d)(2)(A) or (B) and §1.179-4(c).

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

#2 to BA, D had ceased to be a member of the Parent consolidated group prior to E's acquisition of Equipment #2.

(BB) Example 28--(1) Facts. Parent owns all of the stock of B and S, which are members of the Parent consolidated group. S has a depreciable interest in Equipment #3. No other current or previous member of the Parent consolidated group has ever had a depreciable interest in Equipment #3 while a member of the Parent consolidated group. X is the common parent of a consolidated group and is not related, within the meaning of section 179(d)(2)(A) or (B) and §1.179-4(c), to any member of the Parent consolidated group. No member of the X consolidated group has ever had a depreciable interest in Equipment #3 while a member of the X consolidated group. On January 1, 2019, B purchases Equipment #3 from S. On February 15, 2019, as part of the same series of related transactions that includes B's purchase of Equipment #3, Parent sells all of the stock of B to X. Thus, B leaves the Parent consolidated group at the end of the day on February 15, 2019, and joins the X consolidated group on February 16, 2019. See §1.1502-76(b).

(2) Application of paragraph (b)(3)(v)(C) of this section. B was a member of the Parent consolidated group when B acquired Equipment #3 from S, another member of the same group. Paragraph (b)(3)(v)(A) of this section generally treats each member of a consolidated group as having a depreciable interest in property during the time any member of the group had a depreciable interest in such property while a member of the group. However, B acquired Equipment #3 in a transaction meeting the requirements of paragraph (b)(3)(iii)(A) of this section, without regard to section 179(d)(2)(A) or (B) or paragraph (b)(3)(v)(A) of this section, and Parent sold all of the stock of B to X within 90 calendar days of B's acquisition of Equipment #3 as part of the same series of related transactions that included B's acquisition of Equipment #3. Thus, under paragraph (b)(3)(v)(C) of this section, B's acquisition of Equipment #3 is treated as occurring on February 16, 2019, for all Federal income tax purposes.

(3) Eligibility for the additional first year depreciation deduction. B's acquisition of Equipment #3 on February 16, 2019, under paragraph (b)(3)(v)(C) of this section satisfies the requirement in paragraph (b)(3)(iii)(A)(1) of this section because B does not have a prior depreciable interest in Equipment #3. In addition, because no member of the X consolidated group previously had a depreciable interest in Equipment #3 while a member of the X consolidated group, B is not treated as previously having a depreciable interest in Equipment #3 under paragraph (b)(3)(v)(A) of this section. Further, because the relation between S and B is tested as if B acquired Equipment #3 while a member of the X consolidated group, S and B are neither members nor component members of the same controlled group on February 16, 2019. Therefore, section 179(d)(2)(A) and (B) and §1.179-4(c)(1)(ii) and (iii) are satisfied. If the other requirements of paragraph (b)(3)(iii)(A) of this section are satisfied, B is treated as placing Equipment #3 in service on a date not earlier than February 16, 2019, while a member of the X consolidated group. Accordingly, assuming all other requirements of this section are satisfied, B is eligible to claim the additional first year depreciation deduction for Equipment #3 on that date. In addition, because the sale of Equipment #3

is deemed to occur between S, a member of the Parent consolidated group, and B, a member of the X consolidated group, the transaction is not between members of the same consolidated group and thus is not covered by section 168(i)(7)(B)(ii). Therefore, B's deduction is not limited by section 168(i)(7)(A) when B is treated, under paragraph (b)(3)(v)(C) of this section, as placing Equipment #3 in service on a date not earlier than February 16, 2019.

(CC) Example 29--(1) Facts. The facts are the same as Example 28 in paragraph (b)(3)(viii)(BB)(1) of this section, except that S owns all of the stock of T (rather than a depreciable interest in Equipment #3), which is a member of the Parent consolidated group; T has a depreciable interest in Equipment #3; B acquires all of the stock of T (instead of a depreciable interest in Equipment #3) on January 1, 2019; and S and B make a section 338(h)(10) election for B's qualified stock purchase.

(2) Application of paragraph (b)(3)(v)(D) of this section. As a result of the section 338(h)(10) election, Old T is treated as transferring all of its assets, including Equipment #3, to an unrelated person in a single transaction in exchange for consideration at the close of the acquisition date and then transferring the consideration received to S in liquidation. In turn, New T is treated as acquiring all of its assets, including Equipment #3, from an unrelated person in exchange for consideration on the following day. See §1.338-1(a)(1). New T was a member of the Parent consolidated group on January 1, 2019, the date that New T acquired Equipment #3. Paragraph (b)(3)(v)(A) of this section generally treats each member of a consolidated group as having a depreciable interest in property during the time any member of the group had a depreciable interest in such property while a member of the group. However, New T would be eligible for the additional first year depreciation deduction under this section without regard to paragraph (b)(3)(v)(A) of this section, and Parent sold all of its B stock to X within 90 calendar days of New T's acquisition of Equipment #3 as part of the same series of related transactions that included the acquisition, thereby causing B and New T to cease to be members of the Parent consolidated group at the end of the day on February 15, 2019. Thus, paragraph (b)(3)(v)(D) applies to treat the acquisition date as February 16, 2019, for all Federal income tax purposes.

(3) Eligibility for the additional first year depreciation deduction. Pursuant to paragraph (b)(3)(v)(D), Old T is treated as selling its assets to an unrelated person on February 16, 2019, and New T is treated as acquiring those assets on the following day, February 17, 2019. If the other requirements of paragraph (b)(3)(iii)(A) of this section are satisfied, New T is treated as placing Equipment #3 in service on a date not earlier than February 17, 2019, while a member of the X consolidated group. Accordingly, assuming all other requirements of this section are satisfied, New T is eligible to claim the additional first year depreciation deduction for Equipment #3 when New T places Equipment #3 in service. In addition, the amount of the deduction is not limited by section 168(i)(7)(A).

(DD) Example 30--(1) Facts. G, which is not a member of a consolidated group, has a depreciable interest in Equipment #4. Parent owns all the stock of H, which is a member of the Parent consolidated group. No member of the Parent consolidated

group has ever had a depreciable interest in Equipment #4 while a member of the Parent consolidated group, and neither Parent nor H is related to G within the meaning of section 179(d)(2)(A) or (B) and §1.179-4(c). During 2018, G sells Equipment #4 to a person not related to G, Parent, or H within the meaning of section 179(d)(2)(A) or (B) and §1.179-4(c). In a series of related transactions, during 2019, Parent acquires all of the stock of G, and H purchases Equipment #4 from an unrelated person.

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

(EE) Example 31. (1) In a series of related transactions, a father sells a machine to an unrelated individual in December 2019 who sells the machine to the father's daughter in January 2020 for use in the daughter's trade or business. Pursuant to paragraph (b)(3)(iii)(C)(1) of this section, the time to test whether the parties are related is immediately after each step in the series, and between the original transferor and the ultimate transferee immediately after the last transaction in the series. As a result, the following relationships are tested under section 179(d)(2)(A): the father and the unrelated individual, the unrelated individual and the father's daughter, and the father and his daughter.

(2) Because the individual is not related to the father within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii), the individual's acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(2) of this section. Accordingly, assuming all other requirements of this section are satisfied, the individual's purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(3) The individual and the daughter are not related parties within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii). However, the father and his daughter are related parties within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii). Accordingly, the daughter's acquisition of the machine does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section and is not eligible for the additional first year depreciation deduction.

(FF) Example 32. (1) The facts are the same as in Example 31 of paragraph (b)(3)(viii)(EE)(1) of this section, except that instead of selling to an unrelated individual, the father sells the machine to his son in December 2019 who sells the machine to his sister (the father's daughter) in January 2020. Pursuant to paragraph (b)(3)(iii)(C)(1) of this section, the time to test whether the parties are related is immediately after each step in the series, and between the original transferor and the ultimate transferee



immediately after the last transaction in the series. As a result, the following relationships are tested under section 179(d)(2)(A): the father and his son, the father's son and his sister, and the father and the father's daughter.

(2) Because the father and his son are related parties within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii), the son's acquisition of the machine does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Accordingly, the son's acquisition of the machine is not eligible for the additional first year depreciation deduction.

(3) The son and his sister are not related parties within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii). However, the father and his daughter are related parties within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii). Accordingly, the daughter's acquisition of the machine does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section and is not eligible for the additional first year depreciation deduction.

(GG) Example 33. (1) In June 2018, DA, an individual, bought and placed in service a new machine from an unrelated party for use in its trade or business. In a series of related transactions, DA sells the machine to DB and DB places it in service in October 2019, DB sells the machine to DC and DC places it in service in December 2019, and DC sells the machine to DD and DD places it in service in January 2020. DA and DB are related parties within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii). DB and DC are related parties within the meaning of section 179(d)(2)(B) and §1.179-4(c)(iii). DC and DD are not related parties within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii), or section 179(d)(2)(B) and §1.179-4(c)(iii). DA is not related to DC or to DD within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii). All parties are calendar year taxpayers.

(2) DA's purchase of the machine in June 2018 satisfies the original use requirement of paragraph (b)(3)(ii) of this section and, assuming all other requirements of this section are met, qualifies for the additional first year depreciation deduction under this section.

(3) Pursuant to paragraph (b)(3)(iii)(C)(1) of this section, the time to test whether the parties in the series of related transactions are related is immediately after each step in the series, and between the original transferor and the ultimate transferee immediately after the last transaction in the series. However, because DB placed in service and disposed of the machine in the same taxable year, DB is disregarded pursuant to paragraph (b)(3)(iii)(C)(2)(i) of this section. As a result, the following relationships are tested under section 179(d)(2)(A) and (B): DA and DC, DC and DD, and DA and DD.

(4) Because DA is not related to DC within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii), DC's acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(2) of this section. Accordingly,

assuming all other requirements of this section are satisfied, DC's purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(5) Because DC is not related to DD and DA is not related to DD within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii), or section 179(d)(2)(B) and §1.179-4(c)(iii), DD's acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(2) of this section. Accordingly, assuming all other requirements of this section are satisfied, DD's purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(HH) Example 34. (1) In June 2018, EA, an individual, bought and placed in service a new machine from an unrelated party for use in his trade or business. In a series of related transactions, EA sells the machine to EB and EB places it in service in September 2019, EB transfers the machine to EC in a transaction described in paragraph (g)(1)(iii) of this section and EC places it in service in November 2019, and EC sells the machine to ED and ED places it in service in January 2020. EA and EB are not related parties within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii). EB and EC are related parties within the meaning of section 179(d)(2)(B) and §1.179-4(c)(iii). EB and ED are related parties within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii), or section 179(d)(2)(B) and §1.179-4(c)(iii). EC and ED are not related parties within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii), or section 179(d)(2)(B) and §1.179-4(c)(iii). EA is not related to EC or to ED within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii). All parties are calendar year taxpayers.

(2) EA's purchase of the machine in June 2018 satisfies the original use requirement of paragraph (b)(3)(ii) of this section and, assuming all other requirements of this section are met, qualifies for the additional first year depreciation deduction under this section.

(3) Pursuant to paragraph (b)(3)(iii)(C)(1) of this section, the time to test whether the parties in the series of related transactions are related is immediately after each step in the series, and between the original transferor and the ultimate transferee immediately after the last transaction in the series. However, because EB placed in service and transferred the machine in the same taxable year in a transaction described in paragraph (g)(1)(iii) of this section, the section 168(i)(7) transaction between EB and EC is disregarded pursuant to paragraph (b)(3)(iii)(C)(2)(iii) of this section. As a result, the following relationships are tested under section 179(d)(2)(A) and (B): EA and EB, EB and ED, EC and ED, and EA and ED.

(4) Because EA is not related to EB within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii), EB's acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(2) of this section. Accordingly, assuming all other requirements of this section are satisfied, EB's purchase price of the machine qualifies for the additional first year depreciation deduction under this section. Pursuant to paragraph (g)(1)(iii) of this section, EB is allocated 2/12 of its 100-percent additional first year depreciation deduction for the machine, and EC is allocated the

remaining portion of EB's 100-percent additional first year depreciation deduction for the machine.

(5) EC is not related to ED and EA is not related to ED within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii), or section 179(d)(2)(B) and §1.179-4(c)(iii). However, EB and ED are related parties within the meaning of section 179(d)(2)(A) and §1.179-4(c)(ii), or section 179(d)(2)(B) and §1.179-4(c)(iii). Accordingly, ED's acquisition of the machine does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section and is not eligible for the additional first year depreciation deduction.

\* \* \* \* \*

(5) \* \* \*

(ii) \* \* \*

(A) \* \* \* For determination of acquisition date, see paragraph (b)(5)(ii)(B) of this section for property acquired pursuant to a written binding contract, paragraph (b)(5)(iv) of this section for self-constructed property, and paragraph (b)(5)(v) of this section for property not acquired pursuant to a written binding contract.

\* \* \* \* \*

(iii) \* \* \*

(G) Acquisition of a trade or business or an entity. A contract to acquire all or substantially all of the assets of a trade or business or to acquire an entity (for example, a corporation, a partnership, or a limited liability company) is binding if it is enforceable under State law against the parties to the contract. The presence of a condition outside the control of the parties, including, for example, regulatory agency approval, will not prevent the contract from being a binding contract. Further, the fact that insubstantial terms remain to be negotiated by the parties to the contract, or that customary conditions remain to be satisfied, does not prevent the contract from being a binding contract. This paragraph (b)(5)(iii)(G) also applies to a contract for the sale of the stock

of a corporation that is treated as an asset sale as a result of an election under section 338.

\* \* \* \* \*

(v) Determination of acquisition date for property not acquired pursuant to a written binding contract. Except as provided in paragraphs (b)(5)(iv), (vi), and (vii) of this section, the acquisition date of property that the taxpayer acquires pursuant to a contract that does not meet the definition of a written binding contract in paragraph (b)(5)(iii) of this section, is the date on which the taxpayer paid (in the case of a cash basis taxpayer) or incurred (in the case of an accrual 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 and designing, securing financing, exploring, or researching. This paragraph (b)(5)(v) does not apply to an acquisition described in paragraph (b)(5)(iii)(G) of this section.

\* \* \* \* \*

(viii) \* \* \* 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), paragraph (c) of this section does not apply, and the parties do not have predecessors:

\* \* \* \* \*

(c) Election for components of larger self-constructed property for which the manufacture, construction, or production begins before September 28, 2017--(1) In general. A taxpayer may elect to treat any acquired or self-constructed component, as described in paragraph (c)(3) of this section, of the larger self-constructed property, as described in paragraph (c)(2) of this section, as being eligible for the additional first year

depreciation deduction under this section, assuming all requirements of section 168(k) and this section are met. The taxpayer may make this election for one or more such components.

(2) Eligible larger self-constructed property--(i) In general. Solely for purposes of this paragraph (c) and except as provided in paragraph (c)(2)(ii) of this section, the larger self-constructed property must be qualified property under section 168(k)(2), as in effect on the day before the date of the enactment of the Act, for which the taxpayer begins the manufacture, construction, or production before September 28, 2017. The determination of when manufacture, construction, or production of the larger self-constructed property begins is made in accordance with the rules in §1.168(k)-1(b)(4)(iii)(B). A larger self-constructed property is property that is manufactured, constructed, or produced by the taxpayer for its own use in its trade or business or for its production of income, or property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract, as defined in §1.168(k)-1(b)(4)(ii), 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. If the 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 the larger self-constructed property and the manufacture, construction, or production of this property begins after September 27, 2017, paragraph (b)(5)(iv) of this section applies and paragraph (c) of this section does not apply.

(ii) Exceptions. This paragraph (c) does not apply to any larger self-constructed property that meets at least one of the following criteria--

(A) Is placed in service by the taxpayer before September 28, 2017;

(B) Is placed in service by the taxpayer after December 31, 2019, or for property described in section 168(k)(2)(B) or (C) as in effect on the day before the date of the enactment of the Act, after December 31, 2020;

(C) Does not meet the original use requirement in section 168(k)(2)(A)(ii) as in effect on the day before the date of the enactment of the Act;

(D) Is described in section 168(k)(9) and §1.168(k)-2(b)(2)(ii)(F) or (G);

(E) Is described in section 168(g)(1)(F) and (g)(8) (electing real property trade or business) or section 168(g)(1)(G) (electing farming business) and placed in service by the taxpayer in any taxable year beginning after December 31, 2017;

(F) Is 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, and placed in service by the taxpayer after December 31, 2017;

(G) Is 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, and placed in service by the taxpayer after December 31, 2017;

(H) Is 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, and placed in service by the taxpayer after December 31, 2017;

(I) Is qualified improvement property as defined in §1.168(b)-1(a)(5)(i)(A) (placed in service by the taxpayer after December 31, 2017); or

(J) Is included in a class of property for which the taxpayer made an election under section 168(k)(7) (formerly section 168(k)(2)(D)(iii)) not to deduct the additional first year depreciation deduction.

(3) Eligible components--(i) In general. Solely for purposes of this paragraph (c), a component of the larger self-constructed property, as described in paragraph (c)(2) of this section, must be qualified property under section 168(k)(2) and paragraph (b) of this section.

(ii) Acquired components. Solely for purposes of this paragraph (c), a binding contract, as defined in paragraph (b)(5)(iii) of this section, to acquire a component of the larger self-constructed property must be entered into by the taxpayer after September 27, 2017.

(iii) Self-constructed components. Solely for purposes of this paragraph (c), the manufacture, construction, or production of a component of the larger self-constructed property must begin after September 27, 2017. The determination of when manufacture, construction, or production of the component begins is made in accordance with the rules in paragraph (b)(5)(iv)(B) of this section.

(4) Special rules--(i) Installation costs. If the taxpayer pays or incurs costs, including labor costs, to install a component of the larger self-constructed property, as described in paragraph (c)(2) of this section, such costs are eligible for additional first year depreciation under this section, assuming all requirements are met, only if the component being installed meets the requirements in paragraph (c)(3) of this section.

(ii) Property described in section 168(k)(2)(B). For purposes of this paragraph (c), the unadjusted depreciable basis, as defined in §1.168(b)-1(a)(3), of qualified

property in section 168(k)(2)(B), as in effect on the day before the date of the enactment of the Act, is limited to the property's unadjusted depreciable basis attributable to the property's manufacture, construction, or production before January 1, 2020. The amounts of unadjusted depreciable basis attributable to the property's manufacture, construction, or production before January 1, 2020, are referred to as "progress expenditures." Rules similar to the rules in section 4.02(1)(b) of Notice 2007-36 (2007-17 I.R.B. 1000) (see §601.601(d)(2)(ii)(b) of this chapter) apply for determining progress expenditures.

(5) Computation of additional first year depreciation deduction--(i) Election is made. Before determining the allowable additional first year depreciation deduction for property for which the taxpayer makes the election specified in this paragraph (c), the taxpayer must determine the portion of the unadjusted depreciable basis, as defined in §1.168(b)-1(a)(3), of the larger self-constructed property, including all components, attributable to the component that meets the requirements of paragraph (c)(3) of this section (component basis). The additional first year depreciation deduction for the component basis is determined by multiplying such component basis by the applicable percentage for the placed-in-service year of the larger self-constructed property. The additional first year depreciation deduction for the remaining unadjusted depreciable basis of the larger self-constructed property, as described in paragraph (c)(2) of this section, is determined by multiplying such remaining unadjusted depreciable basis by the phase-down percentage in section 168(k)(8) applicable to the placed-in-service year of the larger self-constructed property. For purposes of this paragraph (c), the remaining unadjusted depreciable basis of the larger self-constructed property is equal



to the unadjusted depreciable basis, as defined in §1.168(b)-1(a)(3), of the larger self-constructed property, including all components, reduced by the sum of the component basis of the components for which the taxpayer makes the election specified in this paragraph (c). If the phase-down percentage in section 168(k)(8) is zero for the placed-in-service year of the larger self-constructed property, none of the components of the larger self-constructed property qualify for the additional first year depreciation deduction under this section.

(ii) Election is not made. If the taxpayer does not make the election specified in this paragraph (c), the additional first year depreciation deduction for the larger self-constructed property, including all components, that is qualified property under section 168(k)(2), as in effect on the day before the date of the enactment of the Act, is determined by multiplying the unadjusted depreciable basis, as defined in §1.168(b)-1(a)(3), of the larger self-constructed property, including all components, by the phase-down percentage in section 168(k)(8) applicable to the placed-in-service year of the larger self-constructed property.

(6) Time and manner for making election--(i) Time for making election. The election specified in this paragraph (c) must be made by the due date, including extensions, of the Federal tax return for the taxable year in which the taxpayer placed in service the larger self-constructed property.

(ii) Manner of making election. The election specified in this paragraph (c) must be made by attaching a statement to such return indicating that the taxpayer is making the election provided in this paragraph (c) and whether the taxpayer is making the election for all or some of the components described in paragraph (c)(3) of this section.

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).

(7) Examples. The application of this paragraph (c) is illustrated by the following examples. Unless the facts specifically indicate otherwise, assume that the larger self-constructed property is qualified property under section 168(k)(2) as in effect on the day before the date of the enactment of the Act, and the components acquired or self-constructed after September 27, 2017, are qualified property under section 168(k)(2) and paragraph (b) of this section.

(i) Example 1. (A) BC, a calendar year taxpayer, is engaged in a trade or business described in section 163(j)(7)(A)(iv). In December 2015, BC decided to construct an electric generation power plant for its own use. This plant is property described in section 168(k)(2)(B) as in effect on the day before the date of the enactment of the Act. However, the turbine for the plant had to be manufactured by another person for BC. In January 2016, BC entered into a written binding contract with CD to acquire the turbine. BC received the completed turbine in August 2017 at which time BC incurred the cost of the turbine. The cost of the turbine is 11 percent of the total cost of the electric generation power plant to be constructed by BC. BC began constructing the electric generation power plant in October 2017 and placed in service this new power plant, including all component parts, in 2020.

(B) BC uses the safe harbor test in §1.168(k)-1(b)(4)(iii)(B)(2) to determine when physical work of a significant nature begins for the electric generation power plant. Because the turbine that was manufactured by CD for BC is more than 10 percent of the total cost of the electric generation power plant, physical work of a significant nature for this plant began before September 28, 2017. None of BC's expenditures for components of the power plant that are acquired or self-constructed after September 27, 2017, are eligible for the election specified in this paragraph (c) because the power plant is described in section 168(k)(9)(A) and paragraph (b)(2)(ii)(F) of this section and, therefore, are not eligible for the election pursuant to paragraph (c)(2)(ii)(D) of this section. Assuming all requirements are met under section 168(k)(2) as in effect on the day before the date of the enactment of the Act, the unadjusted depreciable basis of the power plant, including all components, attributable to its construction before January 1, 2020, is eligible for the 30-percent additional first year depreciation deduction pursuant to section 168(k)(8).

(ii) Example 2. (A) In August 2017, BD, a calendar-year taxpayer, entered into a written binding contract with CE for CE to manufacture a locomotive for BD for use in its trade or business. Before September 28, 2017, BD incurred \$500,000 of expenses for the locomotive, which is more than 10 percent of the total cost of the locomotive. After September 27, 2017, BD incurred \$4,000,000 of expenses for components of the locomotive. These components were acquired or self-constructed after September 27, 2017. In February 2019, CE delivered the locomotive to BD and BD placed in service the locomotive. The total cost of the locomotive is \$4,500,000. The locomotive is property described in section 168(k)(2)(B) as in effect on the day before the date of the enactment of the Act. On its timely filed Federal income tax return for 2019, BD made the election specified in this paragraph (c).

(B) BD uses the safe harbor test in §1.168(k)-1(b)(4)(iii)(B)(2) to determine when physical work of a significant nature begins for the locomotive. Because BD had incurred more than 10 percent of the total cost of the locomotive before September 28, 2017, physical work of a significant nature for this locomotive began before September 28, 2017. Because BD made the election specified in this paragraph (c), the cost of \$4,000,000 for the locomotive's components acquired or self-constructed after September 27, 2017, qualifies for the 100-percent additional first year depreciation deduction, assuming all other requirements are met. The remaining cost of the locomotive is \$500,000 and such amount qualifies for the 40-percent additional first year depreciation deduction pursuant to section 168(k)(8).

(iii) Example 3. (A) In March 2017, BE, a calendar-year taxpayer, decided to construct qualified leasehold improvement property, as defined in section 168(e)(6) as in effect on the day before enactment of the Act, for its own use in its trade or business. This qualified leasehold improvement property also met the definition of qualified improvement property as defined in section 168(k)(3) as in effect on the day before enactment of the Act. Physical work of a significant nature for this qualified leasehold improvement property began before September 28, 2017. After September 27, 2017, BE acquired components of the qualified leasehold improvement property at a cost of \$100,000. BE placed in service the qualified leasehold improvement property in February 2018.

(B) Because BE placed in service the qualified leasehold improvement property after December 31, 2017, none of BE's expenditures of \$100,000 for components of the qualified leasehold improvement property that are acquired after September 27, 2017, are eligible for the election specified in this paragraph (c) pursuant to paragraph (c)(2)(ii)(F) of this section. Additionally, BE's unadjusted depreciable basis of the qualified leasehold improvement property, including all components, is not eligible for any additional first year depreciation deduction under section 168(k) and this section nor under section 168(k) as in effect on the day before enactment of the Act.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) \* \* \* The amounts of unadjusted depreciable basis attributable to the property's manufacture, construction, or production before January 1, 2020, are referred to as "progress expenditures." Rules similar to the rules in section 4.02(1)(b) of Notice 2007-36 (2007-17 I.R.B. 1000) (see §601.601(d)(2)(ii)(b) of this chapter) apply for determining progress expenditures.

\* \* \* \* \*

(g) \* \* \*

(11) Mid-quarter convention. In determining whether the mid-quarter convention applies for a taxable year under section 168(d)(3) and §1.168(d)-1, the depreciable basis, as defined in §1.168(d)-1(b)(4), for the taxable year the qualified property is placed in service by the taxpayer is not reduced by the allowed or allowable additional first year depreciation deduction for that taxable year. See §1.168(d)-1(b)(4).

(h) \* \* \*

(4) Regulation project REG-106808-19--(i) In general. Except as provided in paragraph (h)(4)(ii) of this section, the rules of this section in this regulation project REG-106808-19 apply to--

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

(B) A specified plant for which the taxpayer properly made an election to apply section 168(k)(5) and that is planted, or grafted to a plant that was previously planted, by the taxpayer during or after the taxpayer's taxable year that includes the date of

publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**; and

(C) Components acquired or self-constructed after September 27, 2017, of larger self-constructed property for which manufacture, construction, or production begins before September 28, 2017, and that is qualified property under section 168(k)(2) as in effect before the enactment of the Act and placed in service by the taxpayer during or after the taxpayer's taxable year that includes the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

(ii) Early application of regulation project REG-106808-19. A taxpayer may rely on the provisions of this section in this regulation project REG-106808-19, in its entirety, for--

(A) 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 the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**;

(B) 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 the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**; and

(C) Components acquired or self-constructed after September 27, 2017, of larger self-constructed property for which manufacture, construction, or production begins before September 28, 2017, and that is qualified property under section 168(k)(2) as in effect before the enactment of the Act and placed in service 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 the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Kirsten Wielobob

Deputy Commissioner for Services and Enforcement.