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Treasury, IRS release final and proposed regulations on new 100% depreciation

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WASHINGTON — The Treasury Department and the Internal Revenue Service today released final regulations (PDF) and additional proposed regulations (PDF) under section 168(k) of the Internal Revenue Code on the new 100% additional first year depreciation deduction that allows businesses to write off most depreciable business assets in the year they are placed in service by the business.

The regulations released today on IRS.gov have been submitted to the Federal Register and may vary slightly from the published documents due to minor editorial changes. The documents published in the Federal Register will be the official documents.

The final regulations finalize the proposed regulations issued in August 2018 which implement several provisions included in the Tax Cuts and Jobs Act (TCJA). The proposed regulations contain new provisions not addressed previously.

The 100% additional first year depreciation deduction generally applies to depreciable business assets with a recovery period of 20 years or less and certain other property. Machinery, equipment, computers, appliances and furniture generally qualify.

The deduction applies to qualifying property acquired and placed in service after September 27, 2017. The final regulations provide clarifying guidance on the requirements that must be met for property to qualify for the deduction, including used property. The final regulations also provide rules for qualified film, television and live theatrical productions.

Additionally, in the proposed regulations, the Treasury Department and IRS propose rules regarding (i) certain property not eligible for the additional first year depreciation deduction, (ii) a de minimis use rule for determining whether a taxpayer previously used property; (iii) components acquired after Sept. 27, 2017, of larger property for which construction began before Sept. 28, 2017; and (iv) other aspects not dealt with in the previous August 2018 proposed regulations. The proposed regulations also withdraw and repropose rules regarding application of the used property acquisition requirements (i) to consolidated groups, and (ii) to a series of related transactions.

For details on claiming the deduction or electing out of claiming it, see the final regulations or the instructions to Form 4562, Depreciation and Amortization (Including Information on Listed Property). For tax years that include September 28, 2017, see Rev. Proc. 2019-33 (PDF) for further information about making a late election or revoking an election.

Taxpayers who elect out of the 100% depreciation deduction must do so on a timely-filed return. Those who have already timely filed their 2018 return and did not elect out but still wish to do so have six months from the original deadline, without an extension, to file an amended return.

For more information about this and other TCJA provisions, visit IRS.gov/taxreform.

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