



TaxNewsFlash

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Rev. Proc. 2019-33: Relief for bonus depreciation late elections, or revoking prior elections

The IRS today released an advance version of Rev. Proc. 2019-33 that provides guidance for taxpayers to make a late election (or to revoke a prior election) under section 168(k) for certain property acquired by the taxpayer after September 27, 2017, and placed in service by the taxpayer during its tax year that includes September 28, 2017.

Rev. Proc. 2019-33 [PDF 96KB] applies with regard to a taxpayer that:

- Acquired qualified property after September 27, 2017, and placed that property in service during the taxpayer's tax year beginning in 2016 and ending on or after September 28, 2017 (the 2016 tax year)
- Acquired qualified property after September 27, 2017, and placed that property in service during the taxpayer's tax year beginning in 2017 and ending on or after September 28, 2017 (the 2017 tax year), or
- Planted or grafted a specified plant after September 27, 2017, and during the taxpayer's 2016 tax year or 2017 tax year

Background

The U.S. tax law enacted in December 2017 (Pub. L. No. 115-97 that is often referred to as the "Tax Cuts and Jobs Act" (TCJA)) made several changes to the bonus depreciation rules. For example, the additional first-year depreciation deduction percentage was increased from 50% to 100%.

The TCJA also expanded the property eligible for the additional first-year depreciation deduction to include certain used depreciable property and certain film, television, or live theatrical productions. In addition, the placed-in-service date was extended to before January 1, 2027, and regarding agricultural plant grafting, the date on which a specified plant is planted or grafted by the taxpayer was extended to before January 1, 2027.

In August 2018, proposed regulations under section 168(k) were released. Those proposed regulations reflected that (as under prior law), a taxpayer is required to claim bonus depreciation unless it elects out. The “election out” was to be made on an asset recovery class basis. If a taxpayer failed to elect out of bonus depreciation on its originally filed return, its only recourse would have been to request “9100 relief” (an expensive process). Read [TaxNewsFlash](#)

In response to the proposed regulations, Treasury and the IRS received comments in which relief was requested to allow late elections under section 168(k)(7) or (10) for property placed in service during the tax year that included September 28, 2017, because some taxpayers had already filed their tax returns for that tax year (before the proposed regulations were issued). Treasury and the IRS agreed with this request, and today’s revenue procedure sets forth the procedures for making late elections or revoking elections regarding bonus depreciation for property acquired by the taxpayer after September 27, 2017, and placed in service (or planted or grafted) by the taxpayer during its tax year that includes September 28, 2017.

Rev. Proc. 2019-33

As noted in a related IRS release—[IR-2019-135](#)—Rev. Proc. 2019-33 applies to the three elections for the tax year that includes September 28, 2017 (defined above as the 2016 tax year and the 2017 tax year).

- If a taxpayer did not timely make an election for the tax year, Rev. Proc. 2019-33 allows the taxpayer to make late elections by filing an amended return or a Form 3115 for a limited period of time.
- If a taxpayer did timely make an election for that tax year, Rev. Proc. 2019-33 allows the taxpayer to revoke the election by filing an amended return or a Form 3115 for a limited period of time.

Rev. Proc. 2019-33 further states that because of the administrative burden of filing amended returns, Treasury and the IRS will treat the making of late elections (or revoking prior elections) under section 168(k)(5), (7), or (10) for property acquired by a taxpayer after September 27, 2017, and placed in service (or planted or grafted) by the taxpayer during the tax year that includes September 28, 2017, as a change in method of accounting with a section 481(a) adjustment for a limited period of time.

Under the revenue procedure, amended returns are generally allowed to be filed only if the tax return for the immediately succeeding year has not yet been filed. Accounting method change requests may be filed for any of the first three tax years following the year that included September 28, 2017. Such changes are to be filed under Rev. Proc. 2015-13 and are granted automatic consent.

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