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Regulations: Additional first-year depreciation deduction (advance release of text of regulations by IRS)

The U.S. Treasury Department and IRS today released final regulations and additional proposed regulations under section 168(k) relating to the 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 **final regulations** [PDF 692 KB] (169 pages) and related **proposed regulations** [PDF 338 KB] (79 pages) provide guidance concerning changes made by 2017 U.S. tax law (Pub. L. No. 115-97, or the law that is often referred to as the "Tax Cuts and Jobs Act" (TCJA)).

According to a related IRS release—**IR-2019-156**—the regulations released today by the IRS 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. According to the IRS release:

- The final regulations (T.D. 9874) finalize the proposed regulations issued in August 2018 that implement several provisions included in the Tax Cuts and Jobs Act. Read a KPMG report about the August 2018 proposed regulations: ***TaxNewsFlash***

- The proposed regulations (REG-106808-19) 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, the IRS and Treasury in the proposed regulations have proposed rules regarding:

- Certain property not eligible for the additional first year depreciation deduction
- A de minimis use rule for determining whether a taxpayer previously used property
- Components acquired after September 27, 2017, of larger property for which construction began before September 28, 2017
- Other aspects not dealt with in the previous August 2018 proposed regulations. The proposed regulations also withdraw and re-propose rules regarding application of the used property acquisition requirements (1) to consolidated groups, and (2) to a series of related transactions.

The IRS release directs taxpayers seeking information on claiming the deduction or electing out of claiming it to today's final regulations or to the instructions to **Form 4562**, *Depreciation and Amortization (Including Information on Listed Property).* For tax years that include September 28, 2017, the IRS directs taxpayers to refer to **Rev. Proc. 2019-33** [PDF 96 KB] for further information about making a late election or revoking an election. Read ***TaxNewsFlash***

Today's IRS release states that taxpayers that 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.

The purpose of this report is to provide text of the regulations released today. A more detailed discussion of these regulations will be provided in the very near future by KPMG.

Direct comments, including requests for subscriptions, to Washington National Tax. For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.