



# TaxNewsFlash

United States



No. 2020-584  
September 17, 2020

## Final regulations on additional first-year depreciation under section 168(k), OIRA review completed

OMB's Office of Information and Regulatory Affairs (OIRA) reported that it has completed its review of final regulations concerning 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.

Treasury regulations that are identified as "major" regulations are subject to review by OMB's OIRA before being issued, pursuant to Executive Order 13771. OIRA reported that it completed its review of these final regulations on September 16, 2020:

- [RIN: 1545-BP32](#): *Revisions to the section 168(k) final regulations [TCJA]*

A brief description of the regulations provided by OIRA is as follows:

*Proposed regulations REG-104397-18 were issued on 8/8/2018, and provide rules for implementing modifications to 26 U.S.C. 168(k) made by the enactment of Pub. L. 115-97 (Tax Cuts and Jobs Act of 2017). Proposed regulations REG-106808-19 was issued on 09/24/2019 on certain aspects of proposed regulations REG-104397-18 as a result of comments received on proposed regulations REG-104397-18. Final regulations REG-104397-18 was issued on 09/24/2019. The final regulations on REG-106808-19 will address the comments received on the proposed regulations REG-106808-19.*

Now that OIRA review has been completed, Treasury and the IRS can be expected to release these final regulations for publication in the Federal Register—the exact date of publication not being known.

### Background

The 2017 U.S. tax law (Pub. L. No. 115-97, the law that is often referred to as the "Tax Cuts and Jobs Act" (TCJA)) temporarily makes expensing the principal capital cost recovery regime, increasing the section 168(k) first-year "bonus" depreciation deduction to 100%, and allowing taxpayers to write off immediately the cost of acquisitions of plant and equipment. This expensing regime goes further than

pre-enactment law bonus depreciation by applying to both new and used property. The 100% bonus depreciation rule applies through 2022, and then ratably phases down over the succeeding five years.

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