



TaxNewsFlash

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Final regulations released to Federal Register: Additional first year depreciation deduction under section 168(k)

The U.S. Treasury Department and IRS this afternoon released for publication in the Federal Register final regulations (T.D. 9916) regarding the additional first year depreciation deduction under section 168(k).

Read the [final regulations](#) [PDF 402 KB] (37 pages as published in the Federal Register on November 10, 2020).

Treasury and the IRS this afternoon also released a [partial withdrawal of proposed regulations](#) [PDF 261 KB]. The withdrawn portion relates to the extent to which a partner is deemed to have a depreciable interest in property held by a partnership.

Summary

The 2017 tax law (Pub. L. No. 115-97), commonly referred to as the “Tax Cuts and Jobs Act” (TCJA), provides an increased deduction and expanded qualified property, particularly to certain classes of used property.

In September 2019, regulations were proposed under section 168(k) relating to the 100% additional first-year depreciation deduction allowing businesses to write off most depreciable business assets in the year they are placed in service by the business and generally applicable for taxpayers that depreciate qualified property acquired and placed in service after September 27, 2017.

In September 2020, the IRS posted on its website a version of regulations to finalize the proposed regulations. At the same time (September 2020), a related IRS release—[IR-2020-216](#)—explained that this release was the last set of final regulations implementing the 100% additional first year depreciation deduction allowing businesses to write off the cost of most depreciable business assets in the year they are placed in service by the business and generally applies to depreciable business assets (such as machinery, equipment, computers, appliances, and furniture) with a recovery period of

20 years or less and certain other property. The deduction applies to qualifying property (including used property) acquired and placed in service after September 27, 2017.

The IRS release (September 2020) further noted that the final regulations provide:

- Clarifying guidance on the requirements that must be met for property to qualify for the deduction, including used property
- Rules for consolidated groups and rules for components acquired or self-constructed after September 27, 2017, for larger self-constructed property on which production began before September 28, 2017

Thus, the regulations that were proposed in September 2019 are finalized. Also, in notice of withdrawal of proposed regulations (released today), a portion of the proposed regulations (September 2019) that relates to the extent to which a partner is deemed to have a depreciable interest in property held by a partnership is withdrawn.

Comparison against advance version of final regulations

As noted above, the IRS on September 21, 2020, posted on its website a version of these final regulations that includes the following statement:

This document will be submitted to the Office of the Federal Register (OFR) for publication and will be pending placement on public display at the OFR and publication in the Federal Register. The version of the final regulations released today may vary slightly from the published document if minor editorial changes are made during the OFR review process. The document published in the Federal Register will be the official document.

Read a [computer-generated document](#) [PDF 1.4 MB] that provides a comparison of the version of the final and temporary regulations submitted today for publication in the Federal Register against the version posted by the IRS on September 21, 2020. This unofficial document was produced by KPMG for the purpose of showing what changes, if any, were made to the regulations prior to being released to the Federal Register for publication. It has not been reviewed for accuracy.

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