



TaxNewsFlash

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Rev. Proc. 2020-50: Additional first year depreciation deduction; late elections allowed, or elections may be revoked

The IRS today released an advance version of Rev. Proc. 2020-50 as guidance for taxpayers that want to apply Reg. sections 1.168(k)-2 and 1.1502-68, or to rely on 2019 proposed regulations under section 168(k) for:

- Certain depreciable property acquired and placed in service after September 27, 2017, by the taxpayer during its tax years ending on or after September 28, 2017, and before the taxpayer's first tax year that begins on or after January 1, 2021
- Certain plants planted or grafted, as applicable, after September 27, 2017, by the taxpayer during its tax years ending on or after September 28, 2017, and before the taxpayer's first tax year that begins on or after January 1, 2021
- Components acquired or self-constructed after September 27, 2017, of certain larger self-constructed property and placed in service by the taxpayer during its tax years ending on or after September 28, 2017, and before the taxpayer's first tax year that begins on or after January 1, 2021

Read [Rev. Proc. 2020-50](#) [PDF 198 KB] (56 pages)

Today's revenue procedure allows a taxpayer to make a late election—or to revoke an election—for the tax year ending on or after September 28, 2017.

Specifically, Rev. Proc. 2020-50 provides that if the taxpayer retroactively applies Reg. sections 1.168(k)-2 and 1.1502-68, or relies on the 2019 proposed regulations:

- The taxpayer may make a late election under section 168(k)(5), (k)(7), or (k)(10), Reg. section 1.168(k)-2(c) of the 2020 final regulations or the 2019 proposed regulations, or Reg. section 1.1502-68(c)(4) of the 2020 final regulations; or
- The taxpayer may revoke an election under section 168(k)(5), (k)(7), or (k)(10), or Reg. section 1.168(k)-2(c) of the 2019 proposed regulations, for the taxpayer's tax years ending on or after

September 28, 2017, and before the taxpayer's first tax year that begins on or after January 1, 2021.

Intersection with final regulations

The Treasury Department and IRS yesterday afternoon released for publication in the Federal Register final regulations adopting the 2019 proposed regulations (but with certain modifications). Read [TaxNewsFlash](#)

For example, modifications made by the 2020 final regulations in adopting the 2019 proposed regulations concern the rules regarding:

- Whether the taxpayer or a predecessor previously had a depreciable interest in (1) used property when the prior use was de minimis, (2) property acquired in a series of related transactions, and (3) property acquired by a consolidated group
- Components acquired or self-constructed after September 27, 2017, for larger self-constructed property for which manufacture, construction or production began before September 28, 2017

The 2020 final regulations also do not retain the rules regarding a partner's prior depreciable interest in property held by a partnership. Under a separate notice of withdrawal of proposed regulations, these rules will be withdrawn effective January 11, 2021.

The rules in the 2020 final regulations regarding whether the taxpayer or a predecessor previously had a depreciable interest in property acquired by a consolidated group have been moved from Reg. section 1.168(k)-2 to Reg. section 1.1502-68.

The 2020 final regulations also reflect other modifications to the 2019 final regulations. For example, the 2020 final regulations:

- Clarify the application of the five-year safe harbor for determining if the taxpayer or a predecessor previously had a depreciable interest in used property
- Clarify the definitions of predecessor and class of property for basis adjustments under section 743
- Modify the definition of qualified improvement property to reflect the amendments made to section 168(e)(6) by *the Coronavirus Aid, Relief, and Economic Security Act* (Pub. L. 116-136) (CARES Act)

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