

BONUS DEPRECIATION

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Section 168(k) Background

- Section 168(k) was amended by the TCJA to increase bonus depreciation to 100% for qualified property acquired after September 27, 2017, and placed in service after September 27, 2017, and before January 1, 2023
- Phases down by 20% beginning in 2023 (extra year for longer production period property (LPPP) and certain aircraft)
- Qualified property acquired before September 28, 2017, and placed in service in 2017, 2018, and 2019 is eligible for 50%, 40%, and 30% bonus depreciation under pre-TCJA section 168(k) (extra year for LPPP and certain aircraft)

Section 168(k) Regulatory Guidance under TCJA

- On August 3, 2018, proposed regulations (REG-104397-18) (“2018 proposed regulations”) were issued under section 168(k) as amended by TCJA. Taxpayers may rely on the 2018 proposed regulations for property acquired and placed in service after September 27, 2017.
- On September 24, 2019, final regulations (T.D. 9874) and new proposed regulations (REG-106808-19) (“2019 proposed regulations”) were issued under section 168(k) as amended by TCJA.
 - Final regulations apply to property placed in service during or after the tax year that includes September 24, 2019. But taxpayers may rely on the final regulations, if applied in their entirety, for property acquired and placed in service after September 27, 2017. Treas. Reg. § 1.168(k)-2(h).
 - 2019 proposed regulations will apply to property placed in service during or after the tax year that includes the publication date of the T.D. adopting these rules as final regulations. But taxpayers may rely on the 2019 proposed regulations, if applied in their entirety, for property acquired and placed in service after September 27, 2017. Prop. Treas. Reg. § 1.168(k)-2(h)(4).

Property Eligible for 100% Bonus Depreciation

- Certain types of property;
- Original use or certain used property;
- Placed in service before January 1, 2023 (subsequent years’ percentage is phased down); and
- Acquired after September 27, 2017.

Types of Property (Treas. Reg. § 1.168(k)-2(b)(2))

- Tangible property with a MACRS recovery period of 20 years or less
 - 2018 proposed regulations and the final regulations provide that qualified improvement property placed in service after December 31, 2017, without a technical correction, is not eligible
- Computer software amortizable under section 167(f)(1)
- Qualified film, television, or live theatrical productions
 - Final regulations clarify that used film, television, or live theatrical productions are not eligible
- Certain fruit and nut bearing plants before placed-in-service date (elective)

Used Property

- TCJA expanded the application of section 168(k) to certain used property
- Pursuant to section 168(k)(2)(E)(ii), used property must:
 - Meet the requirements of section 179(d)(2)(A), (B), and (C), and section 179(d)(3); and
 - Not previously been used by the taxpayer at any time prior to the acquisition

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