DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9916]

RIN 1545–BP32

Additional First Year Depreciation Deduction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the additional first year depreciation deduction under section 168(k) of the Internal Revenue Code (Code). These final regulations reflect and further clarify the increased deduction and the expansion of qualified property, particularly to certain classes of used property, authorized by the Tax Cuts and Jobs Act. These final regulations generally affect taxpayers who depreciate qualified property acquired and placed in service after September 27, 2017.

DATES: *Effective date:* These regulations are effective on January 11, 2021.

Applicability dates: For dates of applicability, see §§ 1.168(b)–1(b)(2)(iv), 1.168(k)–2(h), and 1.1502–68(e). See **SUPPLEMENTARY INFORMATION** for an in-depth discussion.

FOR FURTHER INFORMATION CONTACT: Concerning §§ 1.168(b)–1 and 1.168(k)–2, Elizabeth R. Binder at (202) 317–4869 or Kathleen Reed at (202) 317–4660 (not toll-free numbers); concerning § 1.1502–68, Samuel G. Trammell at (202) 317–6975 or Katherine H. Zhang at (202) 317–5363 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Applicability

A taxpayer may choose to apply §§ 1.168(k)–2 and 1.1502–68 of these final regulations, in their entirety, to depreciable property acquired and placed in service or certain plants planted or grafted, as applicable, after September 27, 2017, by the taxpayer during a taxable year ending on or after September 28, 2017, provided the taxpayer consistently applies all rules in these final regulations. However, once the taxpayer applies §§ 1.168(k)–2 and 1.1502–68 of these final regulations for a taxable year, the taxpayer must continue to apply §§ 1.168(k)–2 and 1.1502–68 of these final regulations for subsequent taxable years. Alternatively, a taxpayer may rely on the proposed regulations under section 168(k) in REG–106808–19 (84 FR 50152; 2019–41 I.R.B. 912), for depreciable property acquired and placed in service or certain plants planted or grafted, as applicable, after September 27, 2017, by the taxpayer during a taxable year ending on or after September 28, 2017, and ending before the taxpayer's first taxable year that begins on or after January 1, 2021, if the taxpayer follows the proposed regulations in their entirety, except for § 1.168(k)–2(b)(3)(iii)(B)(*5*), and in a consistent manner.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 168(k) and 1502.

Section 168(k) allows an additional first year depreciation deduction for qualified property in the property's placed-in-service year. On December 22, 2017, section 168(k) was amended by sections 12001(b)(13), 13201, and 13204 of Public Law 115–97 (131 Stat. 2054), commonly referred to as the Tax Cuts and Jobs Act (TCJA).

Section 13201 of the TCJA made several significant amendments to the additional first year depreciation deduction provisions in section 168(k) (additional first year depreciation deduction). First, the additional first year depreciation deduction percentage was increased from 50 to 100 percent. Second, the property eligible for the additional first year depreciation deduction was expanded, for the first time, to include certain used depreciable property and certain film, television, or live theatrical productions. Third, the placed-in-service date was extended from before January 1, 2020, to before January 1, 2027 (and from before January 1, 2021, to before January 1, 2028, for longer production period property or certain aircraft property described in section 168(k)(2)(B) or (C)). Fourth, the date on which a specified plant may be planted or grafted by the taxpayer was extended from before January 1, 2020, to before January 1, 2027. The provisions of section 168(k), as amended by the TCJA, are explained in greater detail in the preamble to the final regulations published by the Department of the Treasury (Treasury Department) and the IRS as TD 9874 on September 24, 2019 (2019 Final Regulations) in the **Federal Register** (84 FR 50108).

Section 13201(h) of the TCJA provides the effective dates of the amendments to section 168(k) made by section 13201 of the TCJA. Except as provided in section 13201(h)(2) of the TCJA, section 13201(h)(1) of the TCJA provides that these amendments apply to property acquired and placed in service after September 27, 2017. However, section 13201(h) of the TCJA also provides that property is not treated as acquired after the date on which a written binding contract is entered into for such acquisition. Section 13201(h)(2) provides that the amendments apply to specified plants planted or grafted after September 27, 2017.

Additionally, section 12001(b)(13) of the TCJA repealed section 168(k)(4), relating to the election to accelerate alternative minimum tax credits in lieu of the additional first year depreciation deduction, for taxable years beginning after December 31, 2017. Further, section 13204(a)(4)(B)(ii) repealed section 168(k)(3), so that qualified improvement property placed in service after December 31, 2017, was not eligible for the additional first year depreciation deduction. However, section 2307 of the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, 134 Stat. 281 (March 27, 2020) (CARES Act) amended section 168(e)(3)(E) to provide that qualified improvement property is classified as 15-year property, thereby providing a 15-year recovery period under section 168(c) and making qualified improvement property again eligible for the additional first year depreciation deduction, consistent with the original intent of the TCJA. Section 2307 of the CARES Act is discussed in greater detail in part II.B of the Summary of Comments and Explanation of Revisions section in this preamble.

Unless otherwise indicated, all references to section 168(k) hereinafter are references to section 168(k) as amended by the TCJA.

On August 8, 2018, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–104397–18) in the **Federal Register** (83 FR 39292) containing proposed regulations under section 168(k) (2018 Proposed Regulations). After full consideration of the comments received on the 2018 Proposed Regulations and the testimony heard at the public hearing on November 28, 2018, the Treasury Department and the IRS published the 2019 Final Regulations adopting the 2018 Proposed Regulations with modifications in response to such comments and testimony.

Concurrently with the publication of the 2019 Final Regulations, the Treasury Department and the IRS published an additional notice of proposed rulemaking (REG–106808–19) in the **Federal Register** (84 FR 50152) withdrawing certain provisions of the 2018 Proposed Regulations and proposing additional guidance under section 168(k) (2019 Proposed

Regulations). The Summary of Comments and Explanation of Revisions section of this preamble summarizes the provisions of the 2019 Proposed Regulations, which are explained in greater detail in the preamble to the 2019 Proposed Regulations.

The Treasury Department and the IRS received written and electronic comments responding to the 2019 Proposed Regulations and held a public hearing on the 2019 Proposed Regulations on November 13, 2019. After full consideration of the comments received on the 2019 Proposed Regulations and the testimony heard at the public hearing, this Treasury decision adopts the 2019 Proposed Regulations with modifications in response to certain comments and testimony, as described in the Summary of Comments and Explanation of Revisions section.

Summary of Comments and Explanation of Revisions

The Treasury Department and the IRS received written comments from five commenters in response to the 2019 Proposed Regulations. In connection with these comments, some commenters also provided comments on aspects of the 2019 Final Regulations. All comments were considered and are available at *https://www.regulations.gov* or upon request. The comments addressing the 2019 Proposed Regulations and 2019 Final Regulations are summarized in this Summary of Comments and Explanation of Revisions section.

Because of the amendments to section 168(k) by the TCJA, the 2019 Final Regulations updated existing regulations in § 1.168(k)–1 by providing a new section at § 1.168(k)–2 for property acquired and placed in service after September 27, 2017. The 2019 Final Regulations also made conforming amendments to the existing regulations. The 2019 Final Regulations described and clarified the statutory requirements that must be met for depreciable property to qualify for the additional first year depreciation deduction provided by section 168(k), and they provided guidance to taxpayers in determining the additional first year depreciation deduction and the amount of depreciation otherwise allowable for this property.

These final regulations provide taxpayers with guidance regarding issues relating to the application of section 168(k) that are not addressed in the 2019 Final Regulations, along with clarifying changes to the 2019 Final Regulations. Specifically, these final regulations provide (1) rules relevant to the definition of qualified property, (2) rules for consolidated groups, (3) rules regarding 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, (4) rules regarding the application of the mid-quarter convention, as determined under section 168(d), and (5) changes to the definitions in the 2019 Final Regulations for the terms qualified improvement property, predecessor, and class of property. Also, the rules for consolidated groups have been moved from § 1.168(k)–2(b)(3)(v) of the 2019 Proposed Regulations to new § 1.1502–68 of these final regulations.

Part I of this Background section addresses operational rules. Part II of this Background section addresses definitions.

I. Operational Rules

A. Property Described in Section 168(k)(9)(B)

Section 1.168(k)–2(b)(2)(ii)(G) of the 2019 Proposed Regulations provides that, for purposes of section 168(k)(9)(B), floor plan financing interest is not taken into account for the taxable year by a trade or business that has had floor plan financing indebtedness if the sum of the amounts calculated under section 163(j)(1)(A) and (B) for the trade or business for the taxable year equals or exceeds the business interest (which includes floor plan financing interest), as defined in section 163(j)(5), of the trade or business for the taxable year. If the business interest, which includes floor plan financing interest, exceeds the sum of the amounts calculated under section 163(j)(1)(A) and (B) for the taxable year, the floor plan financing interest is taken into account for the taxable year for purposes of section 168(k)(9)(B). See *Example 7* in § 1.168(k)–2(b)(2)(iii)(G) of the 2019 Proposed Regulations. Floor plan financing indebtedness is defined in section 163(j)(9)(B) and § 1.163(j)–1(b)(18) as indebtedness that is (i) used to finance the acquisition of motor vehicles held for sale or lease; and (ii) secured by the motor vehicles so acquired. Floor plan financing interest expense is defined in section 163(j)(9)(A) and § 1.163(j)–1(b)(19) as interest paid or accrued on floor plan financing indebtedness.

A commenter on the 2019 Proposed Regulations requested that these final regulations allow a trade or business that has business interest expense, including floor plan financing interest expense, that exceeds the sum of the amounts calculated under section 163(j)(1)(A) and (B) for the taxable year, to choose to limit its interest expense deduction to the sum of the amounts under section 163(j)(1)(A) and (B), and not be precluded by section 168(k)(9)(B) from claiming the additional first year depreciation deduction. The Treasury Department and the IRS do not interpret section 163(j)(1) as allowing such an option. Consistent with the plain language of section 163(j)(1), § 1.163(j)–2(b)(1) provides that the amount allowed as a deduction for business interest expense for the taxable year generally cannot exceed the sum of (1) the taxpayer's business interest income for the taxable year, (2) 30 percent of the taxpayer's adjusted taxable income for the taxable year, and (3) the taxpayer's floor plan financing interest expense for the taxable year. Pursuant to section 2306(a) of the CARES Act, the adjusted taxable income percentage is increased from 30 to 50 percent for any taxable year beginning in 2019 or 2020, subject to certain exceptions. Because neither section 163(j)(1) nor § 1.163(j)–2(b) provide an option for a trade or business with floor plan financing indebtedness to include or exclude its floor plan financing interest expense in determining the amount allowed as a deduction for business interest expense for the taxable year, the Treasury Department and the IRS decline to adopt this comment.

The commenter also requested that the Treasury Department and the IRS provide transition relief for taxpayers that treated, on their 2018 Federal income tax returns, section 163(j)(1) as providing an option for a trade or business with floor plan financing indebtedness to include or exclude its floor plan financing interest expense in determining the amount allowed as a deduction for business interest expense for the taxable year. Further, the commenter requested transition relief for taxpayers with a trade or business with floor plan financing indebtedness that want to revoke their elections not to claim the additional first year depreciation for property placed in service during 2018 in order to rely on the 2019 Proposed Regulations. The Treasury Department and the IRS intend to issue published guidance that will address these requests.

B. Used Property

1. Depreciable Interest

a. Five-Year Safe Harbor

Section 1.168(k)–2(b)(3)(iii)(B)(*1*) of the 2019 Final Regulations provides that property is treated as used by the taxpayer or a predecessor at any time prior to acquisition by the taxpayer or predecessor if the taxpayer or the predecessor had a depreciable interest in the property at any time prior to such acquisition, whether or not the taxpayer or the predecessor claimed depreciation deductions for the property. To determine if the taxpayer or a predecessor had a depreciable interest in the property at any time prior to acquisition, the 2019 Final Regulations also provide that only the five calendar years immediately prior to the taxpayer's current placed-in-service year of the property are taken into account (Five-Year Safe Harbor). If the taxpayer and a predecessor have not been in existence for this entire five-year period, the 2019 Final Regulations provide that only the number of calendar years the taxpayer and the predecessor have been in existence are taken into account.

Commenters requested clarification that the Five-Year Safe Harbor applies for purposes of the special rules for consolidated groups in § 1.168(k)–2(b)(3)(v) of the 2019 Proposed Regulations. A commenter also requested clarification whether ''the partnership's current year'' in § 1.168(k)–2(b)(3)(iii)(B)(*5*) of the 2019 Proposed Regulations (Partnership Lookthrough Rule) is the taxable year or the calendar year. These comments are addressed later in this Summary of Comments and Explanation of Revisions section.

In connection with comments received on the Five-Year Safe Harbor and the Partnership Lookthrough Rule, the Treasury Department and the IRS reviewed the Five-Year Safe Harbor and determined that clarification of this safe harbor would be beneficial. One commenter requested clarification of the Five-Year Safe Harbor as to: (1) Whether the ''placed-in-service year'' is the taxable year or the calendar year; and (2) whether the portion of the calendar year covering the period up to the placed-in-service date of the property is taken into account. The commenter also requested clarification regarding the application of the Five-Year Safe Harbor to situations where the taxpayer or a predecessor was not in existence during the entire 5-year lookback period. Specifically, the commenter pointed out that the safe harbor in the 2019 Final Regulations could be read to apply only to those periods in the 5-year lookback period that both the taxpayer and a predecessor are in existence, and not to those periods in the 5-year lookback period during which the taxpayer or a predecessor, or both, were in existence and had a depreciable interest in the property later acquired and placed in service by the taxpayer. The commenter suggested that the Five-Year Safe Harbor be clarified to say that the taxpayer and each predecessor is subject to a separate lookback period that begins no earlier than the date such person came into existence.

The Treasury Department and the IRS intended the ''placed-in-service year'' to be the current calendar year in which the property is placed in service by the taxpayer. Also, the Treasury Department and the IRS intended the portion of that calendar year covering the period up to the placed-in-service date of the property to be considered in determining whether the taxpayer or a predecessor previously had a depreciable interest. This approach is consistent with an exception to the de minimis use rule in § 1.168(k)–2(b)(3)(iii)(B)(*4*) of the 2019 Proposed Regulations, which is discussed in greater detail in part I.B.1.b of this Summary of Comments and Explanation of Revisions section. Pursuant to that exception, when a taxpayer places in service eligible property in Year 1, disposes of that property to an unrelated party in Year 1 within 90 calendar days of that placed-in-service date, and then reacquires the same property later in Year 1, the taxpayer is treated as having a prior depreciable interest in the property upon the taxpayer's reacquisition of the property in Year 1. This rule would be superfluous if the Five-Year Safe Harbor did not consider the portion of the calendar year covering the period up to the placed-in-service date of the property.

Accordingly, § 1.168(k)–2(b)(3)(iii)(B)(*1*) is amended to clarify that the five calendar years immediately prior to the current calendar year in which the property is placed in service by the taxpayer, and the portion of such current calendar year before the placed-in-service date of the property determined without taking into account the applicable convention, are taken into account to determine if the taxpayer or a predecessor had a depreciable interest in the property at any time prior to acquisition (lookback period). Section 1.168(k)–2(b)(3)(iii)(B)(*1*) also is amended to adopt the suggestion of the commenter that each of the taxpayer and the predecessor be subject to a separate lookback period. These final regulations clarify that if the taxpayer or a predecessor, or both, have not been in existence during the entire lookback period, then only the portion of the lookback period during which the taxpayer or a predecessor, or both, have been in existence is taken into account to determine if the taxpayer or the predecessor had a depreciable interest in the property. More examples have been added to clarify the application of the Five-Year Safe Harbor.

b. De Minimis Use

Section 1.168(k)–2(b)(3)(iii)(B)(*4*) of the 2019 Proposed Regulations provides an exception to the prior depreciable interest rule in the 2019 Final Regulations when the taxpayer disposes of property to an unrelated party within 90 calendar days after the taxpayer originally placed such property in service (De Minimis Use Rule). The 2019 Proposed Regulations also provide that the De Minimis Use Rule does not apply if the taxpayer reacquires and again places in service the property during the same taxable year the taxpayer disposed of the property. A commenter on the 2019 Proposed Regulations asked for clarification regarding the application of the De Minimis Use Rule in the following situations:

(1) The taxpayer places in service property in Year 1, disposes of that property to an unrelated party in Year 1 within 90 calendar days of that original placed-in-service date, and then reacquires and again places in service the same property later in Year 1 and does not dispose of the property again in Year 1;

(2) The taxpayer places in service property in Year 1, disposes of that property to an unrelated party in Year 2 within 90 calendar days of that original placed-in-service date, and then reacquires and again places in service the same property in Year 2 or later; and

(3) The taxpayer places in service property in Year 1 and disposes of that property to an unrelated party in Year 1 within 90 calendar days of that original placed-in-service date, then the taxpayer reacquires and again places in service the same property later in Year 1 and disposes of that property to an unrelated party in Year 2 within 90 calendar days of the subsequent placed-in-service date in Year 1, and the taxpayer reacquires and again places in service the same property in Year 4.

In situation 1, the additional first year depreciation deduction is not allowable for the property when it was initially placed in service in Year 1 by the taxpayer pursuant to § 1.168(k)–2(g)(1)(i) of the 2019 Final Regulations. The additional first year depreciation deduction also is not allowable when the same property is subsequently placed in service in Year 1 by the same taxpayer under the De Minimis Use Rule in the 2019 Proposed Regulations. The commenter asserted that the additional first year depreciation deduction should be allowable for the property when it is placed in service again in Year 1 and is not disposed of again in Year 1, because the additional first year depreciation deduction is not allowable for the property when it initially was placed in service in Year 1 by the taxpayer. The Treasury Department and the IRS agree with this comment if the property is originally acquired by the taxpayer after September 27, 2017. The Treasury Department and the IRS decline to adopt this comment with respect to property that was originally acquired by the taxpayer before September 28, 2017, as the exception to the De Minimis Use Rule was intended to prevent certain churning transactions involving such property. The Treasury Department and the IRS believe that property that is placed in service, disposed of, and reacquired in the same taxable year is more likely to be part of a predetermined churning plan.

In situation 2, the additional first year depreciation deduction is allowable for the same property by the same taxpayer twice (in Year 1 when the property is initially placed in service, and in Year 2 when the property is placed in service again). This result is consistent with the De Minimis Use Rule in the 2019 Proposed Regulations, and this result is not changed in these final regulations.

In situation 3, the De Minimis Use Rule provides only one 90-day period that is disregarded in determining whether the taxpayer had a depreciable interest in the property prior to its reacquisition. That 90-day period is measured from the original placed-in-service date of the property by the taxpayer. As a result, the second 90-day period in situation 3 (during which the taxpayer reacquired the property in Year 1, again placed it in service in Year 1, and then disposed of it in Year 2) is taken into account in determining whether the taxpayer previously used the property when the taxpayer again places in service the property in Year 4.

The De Minimis Use Rule in these final regulations is clarified to reflect these results. These final regulations also include additional examples to illustrate the application of the De Minimis Use Rule in these situations and conforming changes to § 1.168(k)–2(g)(1)(i) of the 2019 Final Regulations.

2. Application to Partnerships

The Treasury Department and the IRS received several comments regarding the Partnership Lookthrough Rule in § 1.168(k)–2(b)(3)(iii)(B)(*5*) of the 2019 Proposed Regulations, which addresses the extent to which a partner is deemed to have a depreciable interest in property held by a partnership. The Partnership Lookthrough Rule provides that a person is treated as having a depreciable interest in a portion of property prior to the person's acquisition of the property if the person was a partner in a partnership at any time the partnership owned the property. The Partnership Lookthrough Rule further provides that the portion of property in which a partner is treated as having a depreciable interest is equal to the total share of depreciation deductions with respect to the property allocated to the partner as a percentage of the total depreciation deductions allocated to all partners during the current calendar year and the five calendar years immediately prior to the partnership's current year.

One commenter requested that the Treasury Department and the IRS withdraw the Partnership Lookthrough Rule and replace it with a rule that treats a taxpayer as having a depreciable interest in an item of property only if the taxpayer was a controlling partner in a partnership at any time the partnership owned the property during the applicable lookback period. The Treasury Department and the IRS agree with the commenter that the Partnership Lookthrough Rule should be withdrawn. The Treasury Department and the IRS have determined that the complexity of applying the Partnership Lookthrough Rule would place a significant administrative burden on both taxpayers and the IRS. For this reason, these final regulations do not retain the Partnership Lookthrough Rule. Therefore, under these final regulations, a partner will not be treated as having a depreciable interest in partnership property solely by virtue of being a partner in the partnership. The Treasury Department and the IRS have determined that a replacement rule that applies only to controlling partners is not necessary because the related party rule in section 179(d)(2)(A) applies to a direct purchase of partnership property by a current majority partner, and the series of related transactions rules in § 1.168(k)–2(b)(3)(iii)(C) prevents avoidance of the related party rule through the use of intermediary parties.

The same commenter recommended a number of changes to the Partnership Lookthrough Rule if it were to be retained. It is not necessary to address these comments, because these final regulations do not retain the Partnership Lookthrough Rule.

Additionally, one commenter recommended that the Treasury Department and the IRS clarify the operation of the section 168(k) regulations with respect to section 743(b) adjustments after transfers of partnership interests in section 168(i)(7) transactions, as described in the 2019 Final Regulations. The Treasury Department and the IRS have determined that this comment is outside of the scope of these final regulations.

3. Series of Related Transactions

Section 1.168(k)–2(b)(3)(iii)(C) of the 2019 Proposed Regulations provides special rules for a series of related transactions (Proposed Related Transactions Rule). The Proposed Related Transactions Rule generally provides that the relationship between the parties under section 179(d)(2)(A) or (B) in a series of related transactions is tested immediately after each step in the series, and between the original transferor and the ultimate transferee immediately after the last transaction in the series. The Proposed Related Transactions Rule also provides that the relationship between the parties in a series of related transactions is not tested in certain situations. For example, a party in the series that is neither the original transferor nor the ultimate transferee is disregarded in applying the relatedness test if the party placed in service and disposed of the property in the party's same taxable year or did not place the property in service. The relationship between the parties also is not tested if the step is a transaction described in § 1.168(k)–2(g)(1)(iii) (that is, a transfer of property in a transaction described in section 168(i)(7) in the same taxable year that the property is placed in service by the transferor). Finally, the 2019 Proposed Regulations provide that the Proposed Related Transactions Rule does not apply to syndication transactions or when all transactions in the series are described in § 1.168(k)–2(g)(1)(iii).

A commenter stated that the Proposed Related Transactions Rule may disregard significant relationships that existed before the series, or that are formed as a result of the series. The commenter also stated that the rule does not address how relatedness should be tested when the relationship between the parties changes over the course of the series or when a party ceases to exist.

The commenter recommended that the final regulations test relatedness immediately before the first step in the series of related transactions and immediately after the last step in the series, similar to § 1.197–2(h)(6)(ii)(B). The commenter also recommended simplifying the Proposed Related Transactions Rule and alleviating knowledge burdens imposed on transferees and the IRS as to whether a transfer is pursuant to a series of related transactions, the date that a transferee in a series placed the asset in service, and whether a transferee is related to a transferor.

The Treasury Department and the IRS have determined that the rule in § 1.197–2(h)(6)(ii)(B) is not appropriate for testing relatedness for purposes of the additional first year depreciation deduction. Section 1.197–2(h)(6)(ii)(B) provides that relatedness is tested immediately before the first step in a series of related transactions and immediately after the last step in the series. The purpose of this rule is to prevent the churning of assets, and the relationship that is of importance is that of the first and last acquisition. In contrast, the purpose of the Proposed Related Transactions Rule is to determine whether each transferee in the series qualifies to claim the additional first year depreciation deduction for the assets and, therefore, testing for relatedness is done immediately after each step in the series. Testing for relatedness at no point in time other than immediately before the first step and immediately after the last step in the series would preclude all intermediaries in the series from claiming the additional first year depreciation deduction. Accordingly, the Treasury Department and the IRS do not adopt this recommendation.

The commenter also recommended several alternative approaches to testing relatedness: (1) Any transferee in a series of related transactions tests its relatedness to every prior transferor in the series; or (2) a transferee tests its relatedness only to its immediate transferor if the transferee demonstrated that it did not know, or have reason to know, that the transfer occurred pursuant to a series of related transactions.

The Treasury Department and the IRS have determined that requiring each transferee in a series of related transactions to test its relatedness to every prior transferor in the series would impose a significant administrative burden. Therefore, these final regulations do not adopt the commenter's first alternative approach.

The Treasury Department and the IRS also have determined that, because a series of related transactions generally is undertaken among the relevant parties pursuant to a preconceived plan, the rule in the commenter's second alternative approach would have limited application. Because the application of this approach would depend upon the taxpayer's demonstration that it did not know, and did not have reason to know, that a transfer occurred pursuant to a series, this rule also may be difficult for both taxpayers and the IRS to administer. Furthermore, this approach fails to adequately address situations where the parties other than the original transferor and the ultimate transferee in a series may be related or may become related pursuant to the series. Thus, these final regulations do not adopt the commenter's second alternative approach.

However, the Treasury Department and the IRS agree that the Proposed Related Transactions Rule should be simplified. The Treasury Department and the IRS also agree that this rule should be modified to take into account changes in the relationship between the parties, including a party ceasing to exist, over the course of a series of related transactions. For example, assume that, pursuant to a series of related transactions, A transfers property to B, B transfers property to C, and C transfers property to D. Under the Proposed Related Transactions Rule, relatedness is tested after each step and between D and A. Assume further that, at the beginning of the series, C was related to A but, prior to acquiring the property, C ceases to be related to A, or A ceases to exist. The Proposed Related Transactions Rule does not address how to treat such changes.

Accordingly, these final regulations provide that each transferee in a series of related transactions tests its relationship under section 179(d)(2)(A) or (B) with the transferor from which the transferee directly acquires the depreciable property (immediate transferor) and with the original transferor of the depreciable property in the series. The transferee is treated as related to the immediate transferor or the original transferor if the relationship exists either immediately before the first transfer of the depreciable property in the series or when the transferee acquires the property. Any transferor in a series of related transactions that ceases to exist during the series is deemed to continue to exist for purposes of testing relatedness.

These final regulations also provide a special rule that disregards certain transitory relationships created pursuant to a series of related transactions. More specifically, if a party acquires depreciable property in a series of related transactions in which the acquiring party acquires stock, meeting the requirements of section 1504(a)(2), of a corporation in a fully taxable transaction, followed by a liquidation of the acquired corporation under section 331, any relationship created as part of such series of transactions is disregarded in determining whether any party is related to such acquired corporation for purposes of testing relatedness. This rule is similar to § 1.197–2(h)(6)(iii) and properly reflects the change in ownership of depreciable property in a series of related transactions without taking into account certain transitory relationships the purpose of which is unrelated to the additional first year depreciation deduction.

Finally, these final regulations provide that, if a transferee in a series of related transactions acquires depreciable property from a transferor that was not in existence immediately prior to the first transfer of the property in the series (new transferor), the transferee tests its relationship with the party from which the new transferor acquired the depreciable property. Examples illustrating these revised rules are provided in these final regulations.

4. Application to Members of a Consolidated Group

a. The 2019 Proposed Regulations

The 2019 Proposed Regulations provide special rules addressing the availability of the additional first year depreciation deduction upon the acquisition of depreciable property by a member of a consolidated group, as defined in § 1.1502–1(b) and (h), respectively. Under the 2019 Proposed Regulations, if a member acquires property in which the consolidated group had a depreciable interest at any time prior to the member's acquisition of such property, then the member is treated as previously having a depreciable interest in such property (Group Prior Use Rule). This rule was first included in the 2018 Proposed Regulations to address situations in which property is disposed of by one member of a consolidated group and subsequently is acquired by another member of the same consolidated group, because the Treasury Department and the IRS had determined that allowing the additional first year depreciation deduction in such situations would not clearly reflect the income of the consolidated group. See 83 FR 39292, 39295 (Aug. 8, 2018). For purposes of the Group Prior Use Rule, a consolidated group is treated as having a depreciable interest in property during the time any current or former member of the group had a depreciable interest while a member of the group. See § 1.168(k)–2(b)(3)(v)(A) of the 2019 Proposed Regulations.

Further, when members of a consolidated group acquire both depreciable property and the stock of a corporation that previously had a depreciable interest in such property pursuant to the same series of related transactions, the 2019 Proposed Regulations treat the member that acquires the property as previously having a depreciable interest in such property (Stock and Asset Acquisition Rule). See § 1.168(k)–2(b)(3)(v)(B) of the 2019 Proposed Regulations. Like the Group Prior Use Rule, the Stock and Asset Acquisition Rule initially was included in the 2018 Proposed Regulations. As stated in the preamble to those regulations, the Treasury Department and the IRS have determined that, in substance, this series of related transactions is the same as a series of related transactions in which a consolidated group acquired the selling corporation, which subsequently reacquired the property in which it previously had a depreciable interest and then transferred it to another member of the consolidated group. In that situation, the additional first year depreciation deduction would not be allowed. See 83 FR 39292, 39295 (Aug. 8, 2018). Both the Group Prior Use Rule and the Stock and Asset Acquisition Rule are adopted in these final regulations with certain modifications, as discussed further in part I.B.4.b(2) of this Summary of Comments and Explanation of Revisions section.

The 2019 Proposed Regulations also include rules addressing transfers of depreciable property between members of the same consolidated group. One such rule (Proposed Consolidated Asset Acquisition Rule) applies if a member (transferee member) acquires depreciable property from another member of the same consolidated group in a taxable transaction and, as part of the same series of related transactions, the transferee member then ceases to be a member of that group within 90 calendar days of the date of the property acquisition. Under the Proposed Consolidated Asset Acquisition Rule, the transferee member is treated as (1) acquiring the property one day after the date on which the transferee member ceases to be a member of the consolidated group (Deconsolidation Date) for all Federal income tax purposes, and (2) placing the property in service no earlier than one day after the Deconsolidation Date for purposes of depreciation and the investment credit allowed by section 38. See § 1.168(k)–2(b)(3)(v)(C) of the 2019 Proposed Regulations.

The Treasury Department and the IRS also determined that, in general, deemed acquisitions of property pursuant to a section 338 election or a section 336(e) election should be subject to the same treatment as actual acquisitions of property because such deemed acquisitions generally are respected as actually occurring for Federal income tax purposes. See §§ 1.336–2(e) and 1.338–1(a)(2); see also § 1.336–1(a)(1) (generally providing that, except to the extent inconsistent with section 336(e), the results of section 336(e) should coincide with those of section 338(h)(10)). Accordingly, the Treasury Department and the IRS proposed a rule analogous to the Proposed Consolidated Asset Acquisition Rule for deemed acquisitions of property pursuant to such an election (Proposed Consolidated Deemed Acquisition Rule, and together with the Proposed Consolidated Asset Acquisition Rule, the Proposed Consolidated Acquisition Rules).

Section 338 and section 336(e) both provide elections to treat certain transfers of a target corporation's stock as transfers of the target corporation's assets. If a section 338 election is made for a ''qualified stock purchase'' (QSP), then the target corporation generally is treated as two separate corporations before and after the acquisition date for Federal income tax purposes. As a result of the election, ''old target'' is deemed to sell its assets to an unrelated person at the close of the acquisition date at fair market value, and ''new target'' is deemed to acquire those assets from an unrelated person at the beginning of the following day. See section 338(a). If the election is a section 338(h)(10) election, then old target is deemed to liquidate following the deemed sale of its assets. See § 1.338–1(a)(1).

Generally, a similar sale and liquidation are deemed to occur if a section 336(e) election is made for a ''qualified stock disposition'' (QSD) of target corporation stock. However, if a section 336(e) election is made for a QSD described in section 355(d)(2) or (e)(2), then a different transaction is deemed to occur. In that case, old target is deemed to sell its assets to an unrelated party and then reacquire those assets from an unrelated party, and old target is not deemed to liquidate (sale-to-self model). See § 1.336–2(b).

The Proposed Consolidated Deemed Acquisition Rule changes certain aspects of the deemed acquisitions that result from a section 338 election or a section 336(e) election. This proposed rule applies if a member (transferee member) acquires, in a QSP or QSD, stock of another member (target) that holds depreciable property and, as part of the same series of related transactions, the transferee member and target cease to be members of the selling consolidated group within 90 calendar days of the QSP or QSD. Under this proposed rule, (1) the acquisition date or disposition date, as applicable, is treated as the day that is one day after the Deconsolidation Date for all Federal income tax purposes, and (2) new target is treated as placing the property in service no earlier than one day after the Deconsolidation Date for purposes of depreciation and the investment credit allowed by section 38. The Proposed Consolidated Deemed Acquisition Rule does not apply to QSDs described in section 355(d)(2) or (e)(2). See § 1.168(k)–2(b)(3)(v)(D) of the 2019 Proposed Regulations.

b. Comments on Consolidated Group Rules in the 2019 Proposed Regulations

The Treasury Department and the IRS received comments regarding the foregoing consolidated group rules in the 2019 Proposed Regulations.

(1) The Proposed Consolidated Acquisition Rules

(a) Issues Under the Proposed Consolidated Acquisition Rules

The Proposed Consolidated Acquisition Rules were intended to make the additional first year depreciation deduction available to the buyer of depreciable property in an intercompany transaction, as defined in § 1.1502–13(b)(1)(i), if the buyer member leaves the consolidated group within 90 calendar days pursuant to the same series of related transactions that includes the property acquisition. As discussed in the preamble to the 2019 Proposed Regulations, the Treasury Department and the IRS have determined that, in substance, such a transaction should be treated the same as if the buyer member first left the consolidated group and then purchased the depreciable property (in which case the buyer member would be allowed to claim the additional first year depreciation deduction). See 84 FR 50152, 50156 (Sep. 24, 2019). Treating the property acquisition as occurring after the buyer member leaves the consolidated group reduces the likelihood that the transfer fails to satisfy the ''purchase'' requirements in section 179(d)(2) and (3), helps ensure that the buyer member is not attributed the seller member's prior use of the property, and precludes the application of section 168(i)(7).

Commenters appreciated the Proposed Consolidated Acquisition Rules. However, commenters also argued that, because these rules treat certain actual or deemed asset acquisitions as occurring on a date that is different than the date on which the acquisitions occurred up to 90 calendar days after the date of such an acquisition for all Federal income tax purposes, these rules create some uncertainty and raise certain implementation issues.

Many of the questions raised by commenters regarding the Proposed Consolidated Acquisition Rules concern the period beginning on the date of the actual or deemed asset acquisition and ending on the Deconsolidation Date (interim period). In particular, commenters noted that tax items may arise during the interim period from both the depreciable property acquired by the transferee member and the consideration received by the transferor member. Commenters asked how income, deductions, or other tax items from the transferred depreciable property during the interim period should be reported, particularly if the asset acquisition occurs in one taxable year and the Deconsolidation Date occurs in the subsequent taxable year. Additionally, commenters suggested that the consideration used to acquire depreciable property from the transferor member may consist of stock or debt instruments that produce dividends or interest during the interim period. According to commenters, the Proposed Consolidated Acquisition Rules do not address how such income should be reported. Commenters also asked how changes in the depreciable property (or the seller consideration) during the interim period—such as a change in value, or a change in use that affects eligibility for the additional first year depreciation deduction—should be taken into account, and how tax items associated with the property should be reported if the transferor member leaves the selling group during the interim period.

Commenters also raised questions about the interim period relating specifically to the Proposed Consolidated Deemed Acquisition Rule. Commenters noted that additional transaction steps, such as property transfers by the transferee member to target, or the assumption of additional liabilities of the transferee member by target, may occur between the date of the QSP and the Deconsolidation Date. If these transaction steps occur, commenters asked whether the aggregate deemed sale price (ADSP) and adjusted grossed-up basis (AGUB) (see §§ 1.338–4 and 1.338–5, respectively) are adjusted and, if so, how.

Additionally, commenters asked about the interaction of the Proposed Consolidated Acquisition Rules with section 355. More specifically, if the transferee member is relying on the acquired assets to satisfy the ''active trade or business'' requirements of section 355(b) in connection with the distribution of the transferee member's stock, commenters asked whether the Proposed Consolidated Acquisition Rules could prevent the distribution from qualifying under section 355 because the asset acquisition would be treated as occurring one day after the transferee member has left the selling group. See section 355(b)(1)(A) (providing that the distributing corporation and the controlled corporation must be ''engaged immediately after the distribution in the active conduct of a trade or business'').

The Treasury Department and the IRS appreciate the comments received with regard to the Proposed Consolidated Acquisition Rules. The Treasury Department and the IRS agree that these proposed rules could create uncertainty and raise implementation issues. As a result, these final regulations adopt an alternative approach (Delayed Bonus Approach) that would alleviate many of the concerns raised by commenters. See the discussion in part I.B.4.b(1)(e) of this Summary of Comments and Explanation of Revisions section.

(b) The 90-Day Requirement

The Proposed Consolidated Acquisition Rules apply only if, as part of the same series of related transactions, the transferee member leaves (or, in the case of a deemed asset purchase, the transferee member and target leave) the transferor member's consolidated group within 90 calendar days of the date of the property acquisition (90-day requirement). See part I.B.4.a of this Summary of Comments and Explanation of Revisions section. The 90-day requirement was based in part on the rule for syndication transactions in section 168(k)(2)(E)(iii) and § 1.168(k)–2(b)(3)(vi) and (b)(4)(iv). By capping the period of time that could elapse between the property transfer date and the Deconsolidation Date, the 90-day requirement was intended to limit the scope of certain issues created by treating the asset acquisition as occurring after the actual transfer date under the Proposed Consolidated Acquisition Rules. See the discussion in part I.B.4.b(1)(a) of this Summary of Comments and Explanation of Revisions section.

The Treasury Department and the IRS received several comments recommending the elimination of the 90-day requirement. The commenters generally argued that, in many cases, the 90-day requirement will be difficult for taxpayers to satisfy. In business transactions, an intercompany asset transfer may be a preparatory step undertaken well in advance of the Deconsolidation Date, particularly if the transaction involves the transfer of legal title to assets. Additionally, delays in regulatory approval for the transaction may preclude the transferee member from leaving the consolidated group within 90 days. Moreover, one commenter argued that the rationale for the 90-day requirement for syndication transactions differs from the rationale for such a requirement in the Proposed Consolidated Acquisition Rules. The commenter noted that the syndication exception in section 168(k)(2)(E)(iii) specifies a period of time that ownership of an asset (rather than the relationship between the transferor and transferee, as in the Proposed Consolidated Acquisition Rules) should be disregarded, and the commenter suggested that the primary authority for disregarding periods of transitory ownership is the step transaction doctrine rather than section 168(k). Commenters also suggested that the 90-day requirement does not further the policy goals of section 168(k). In other words, so long as there is a series of related transactions, whether the asset acquisition and the deconsolidation occur within 90 days should not be determinative. Based on the foregoing, the commenters recommended removing the 90-day requirement and simply retaining the ''series of related transactions'' requirement.

The Treasury Department and the IRS agree with commenters that the 90-day requirement would be difficult for taxpayers to satisfy in many ordinary-course business transactions. The Treasury Department and the IRS also have determined that the Delayed Bonus Approach would eliminate many of the aforementioned issues with the Proposed Consolidated Acquisition Rules by respecting the date on which each transaction in the series actually occurs. Consequently, the Delayed Bonus Approach does not include a 90-day requirement. See the discussion in part I.B.4.b(1)(e) of this Summary of Comments and Explanation of Revisions section.

(c) Assets to Which the Proposed Consolidated Acquisition Rules Apply

Under the 2019 Proposed Regulations, the Proposed Consolidated Acquisition Rules apply to actual or deemed acquisitions of ''depreciable property,'' regardless of whether such property is of a type that is eligible for the additional first year depreciation deduction (eligible property) or of a type that is ineligible for the additional first year depreciation deduction (ineligible property). For example, under a literal reading of the Proposed Consolidated Asset Acquisition Rule, a member's acquisition of several parcels of depreciable real estate that is not eligible property from another member would be subject to this rule (assuming that all other requirements for application of this rule are satisfied), even though none of the transferred property is eligible property. Similarly, a member's acquisition of the stock of a target corporation whose assets largely consist of depreciable real estate that is not eligible property would be subject to the Proposed Consolidated Deemed Acquisition Rule (again, assuming that all other requirements for application of this rule are satisfied), even though most of the target corporation's assets are not eligible property.

One commenter recommended that the final regulations limit the application of the Proposed Consolidated Acquisition Rules to actual or deemed acquisitions of eligible property. The commenter explained that application of the Proposed Consolidated Acquisition Rules to ineligible property would not further the purposes of section 168(k) and might lack statutory authority. The commenter also asserted that such an application might create a trap for unwary taxpayers who do not consult the regulations under section 168(k) when planning transfers of ineligible property.

The Treasury Department and the IRS agree that the Proposed Consolidated Acquisition Rules should apply only to eligible property. Thus, the Delayed Bonus Approach applies solely to depreciable property, as defined in § 1.168(b)–1(a)(1), that meets the requirements in § 1.168(k)–2(b)(2), determined without regard to § 1.168(k)–2(b)(2)(ii)(C) (election not to claim the additional first year depreciation for a class of property) except on the day after the Deconsolidation Date. See the discussion in part I.B.4.b(1)(e) of this Summary of Comments and Explanation of Revisions section.

(d) Application of the Proposed Consolidated Deemed Acquisition Rule to Qualified Stock Dispositions Described in Section 355(d)(2) or (e)(2)

The Proposed Consolidated Deemed Acquisition Rule does not apply to QSDs described in section 355(d)(2) or (e)(2). As explained in part 2(D)(iv) of the Explanation of Provisions section in the 2019 Proposed Regulations and part II(C)(2)(c) of the Summary of Comments and Explanation of Revisions section in the 2019 Final Regulations, the Treasury Department and the IRS determined that this limitation would be appropriate because the rules applicable to such QSDs do not treat a new target corporation as acquiring assets from an unrelated person. See § 1.336–2(b)(2).

One commenter argued that, although the sale-to-self model in § 1.336–2(b)(2) could be construed as violating the ''no prior use'' requirement in section 168(k)(2)(E)(ii)(I) and § 1.168(k)–2(b)(3)(iii)(A)(*1*), this model should not control eligibility for the additional first year depreciation deduction, for several reasons. First, the commenter argued that there is no policy rationale under section 168(k) for treating QSDs described in section 355(d)(2) or (e)(2) differently than other transactions for which an election under section 336(e) is made. Second, the commenter argued that the sale-to-self model was not intended to be applied, and has not been applied, for all Federal income tax purposes. See, for example, § 1.336–2(b)(2)(ii)(C) (for purposes of section 197(f)(9), section 1091, and any other provision designated in the Internal Revenue Bulletin by the Internal Revenue Service, old target in its capacity as the deemed seller of assets is treated as separate and distinct from, and unrelated to, old target in its capacity as the deemed acquirer of assets). Third, the commenter suggested that taxpayers will structure around the exclusion for these QSDs in order to avail themselves of the Proposed Consolidated Deemed Acquisition Rule. Thus, the commenter recommended expanding this rule to include all types of QSD for which an election under section 336(e) is made.

The Treasury Department and the IRS do not agree with the commenter's recommendation to expand the scope of the Proposed Consolidated Deemed Acquisition Rule to include all types of QSD for which an election under section 336(e) is made. In general, a section 336(e) election should not affect the tax consequences to which the purchaser or the distributee would have been subject with respect to the acquisition of target stock if a section 336(e) election had not been made. See § 1.336–2(c). As explained in the preamble to the final section 336(e) regulations, the Treasury Department and the IRS believe that ''the predominant feature of the section 336(e) election with respect to a section 355(d)(2) or (e)(2) transaction is the section 355 transaction.'' 78 FR 28347, 28469 (May 15, 2013). Following such a transaction, the controlled corporation (that is, old target) generally remains in existence, and it retains its earnings and profits and other tax attributes. Because old target remains in existence under this construct, such attributes would include old target's prior use of its depreciable property. Accordingly, the Treasury Department and the IRS decline to expand the scope of the Proposed Consolidated Deemed Acquisition Rule.

(e) Alternative Approaches

Commenters recommended several alternative approaches to alleviate the uncertainties and implementation issues raised by the Proposed Consolidated Acquisition Rules. This part I.B.4.b(1)(e) of this Summary of Comments and Explanation of Revisions section discusses each alternative approach.

(i) Delayed Bonus Approach

The first alternative approach recommended by commenters (Delayed Bonus Approach) would treat the asset acquisition as occurring on the date such acquisition actually occurred for all Federal income tax purposes and, thus, as generally being subject to all Federal income tax rules that ordinarily would apply (with the exception of the series of related transactions rules in § 1.168(k)–2(b)(3)(iii)(C)). For example, during the interim period, the transferee member would recognize depreciation on all depreciable transferred assets (including the eligible property), and the transferor member would recognize gain or loss in accordance with section 168(i)(7) and § 1.1502–13(c)(2).

Absent additional rules, the transferee member would not be able to claim the additional first year depreciation deduction (see sections 179(d)(2)(A) and (B) and the Group Prior Use Rule). To enable the transferee member to claim this deduction, the Delayed Bonus Approach treats the transferee member as (1) selling the eligible property to an unrelated third party one day after the Deconsolidation Date for an amount equal to the member's basis in the eligible property at such time, and then (2) acquiring identical, but different, eligible property from another unrelated third party for the same amount (deemed sale and purchase of eligible property). For this purpose, the transferee member's basis in the eligible property on the day after the Deconsolidation Date is the value of the consideration paid by the transferee member for the property less any depreciation deductions taken by the member with respect to such property during the interim period.

The Treasury Department and the IRS have determined that the Delayed Bonus Approach would achieve the objectives of the Proposed Consolidated Acquisition Rules (that is, permitting additional first year depreciation to the transferee member after the member leaves the selling group pursuant to a series of related transactions) while creating fewer collateral consequences. Moreover, because the Delayed Bonus Approach would respect the asset acquisition as occurring on the actual acquisition date for all Federal income tax purposes, this approach would provide taxpayers with greater certainty regarding the tax consequences of the acquisition and the treatment of tax items arising during the interim period.

Thus, these final regulations adopt the Delayed Bonus Approach for actual and deemed acquisitions of eligible property that satisfy certain requirements. As noted in part I.B.4.b(1)(b) of this Summary of Comments and Explanation of Revisions section, the Delayed Bonus Approach does not include a 90-day requirement because this approach would not raise the same issues as the Proposed Consolidated Acquisition Rules. Furthermore, as noted in part I.B.4.b(1)(c) of this Summary of Comments and Explanation of Revisions section, the transferee member's (or target's) deemed sale and purchase of assets the day after the Deconsolidation Date under the Delayed Bonus Approach applies solely to eligible property (rather than to all depreciable assets).

Under the Delayed Bonus Approach in these final regulations, the transferee member (or target) is treated as selling and then purchasing eligible property for cash. Accordingly, the deemed sale and purchase of eligible property cannot be characterized as an exchange of property that is eligible for nonrecognition treatment under section 1031. Moreover, in the deemed sale and purchase of eligible property, the transferee member (or target) is treated as acquiring used property (deemed replacement property). Accordingly, the original use of such property does not commence with the transferee member (or target). As a result, the deemed sale and purchase of eligible property does not allow the deemed replacement property to be eligible for federal income tax credits or deductions that require new property. For example, such property does not satisfy the original use requirement in section 48(a)(3)(B)(ii) for the energy credit.

Because the cost of the deemed replacement property (and, consequently, the adjusted basis in such property) is identical to the transferee member's (or target's) adjusted basis in the eligible property, a question has arisen as to whether section 179(d)(3) and § 1.168(k)–2(b)(3)(iii)(A)(*3*) potentially could apply to prevent the transferee member (or target) from claiming the additional first year depreciation deduction for such property. To avoid any potential uncertainty in this regard, these final regulations expressly provide that the acquisition of the deemed replacement property does not result in the basis in such property being determined, in whole or in part, by reference to the basis of other property held at any time by the transferee member or target.

The Treasury Department and the IRS note that, under the Delayed Bonus Approach in these final regulations, the deemed sale and purchase of eligible property are treated as occurring for all Federal income tax purposes. Treating the deemed sale and purchase of eligible property as applicable solely for purposes of sections 168 and 179 (and not for all Federal income tax purposes) could lead to complications and inconsistencies. Under such an approach, taxpayers would be required to treat each piece of eligible property as two separate assets: (1) An asset that exists for purposes of sections 168 and 179; and (2) an asset that exists for all other Federal income tax purposes. Therefore, this approach could present difficulties in determining, for instance, (1) how any depreciation claimed with respect to the asset that exists for purposes of sections 168 and 179 affects the taxpayer's adjusted basis in the asset that exists for all other Federal income tax purposes, and (2) how to calculate the gain or loss recognized on a future disposition of the eligible property.

The Delayed Bonus Approach does not apply to property unless such property is eligible property as of the time of its acquisition by the transferee member, the Deconsolidation Date, and the day after the Deconsolidation Date. For this purpose, the status of acquired property as ''eligible property'' is generally determined without regard to § 1.168(k)–2(b)(2)(ii)(C) (property subject to an election not to claim the additional first year depreciation deduction for a class of property). As a result, a series of related transactions may be subject to the Delayed Bonus Approach even if the common parent of the selling consolidated group makes an election under section 168(k)(7) not to claim the additional first year depreciation deduction for a class of property placed in service by the transferee member for the short taxable year ending on the Deconsolidation Date. However, to avoid creating a trap for the unwary, the definition of ''eligible property'' takes into account any such election made for the taxable year that includes the day after the Deconsolidation Date. Accordingly, one component in the definition of eligible property effectively provides that for such taxable year, the transferee member cannot have made an election under section 168(k)(7) not to claim the additional first year depreciation deduction for the class of property to which the acquired property belongs. By extension, the Delayed Bonus Approach does not apply to acquired property belonging to a class of property with respect to which the transferee makes an election under section 168(k)(7), for property placed in service in the taxable year that includes the day after the Deconsolidation Date.

Additionally, these final regulations allow taxpayers to elect out of the application of the Delayed Bonus Approach with respect to all eligible property that otherwise would be subject to the Delayed Bonus Approach. If a taxpayer makes this election for a transaction, the taxpayer also is deemed to have made such an election for all other transactions in the same series of related transactions that otherwise would be subject to the Delayed Bonus Approach and that involve the same (or a related) transferee member or target. To provide clarity and uniformity with the other elections in § 1.168(k)–2, these final regulations provide that the election may be revoked only by filing a request for a private letter ruling and obtaining the Commissioner of Internal Revenue's written consent to revoke the election.

A commenter requested confirmation that the deemed sale and purchase of eligible property under the Delayed Bonus Approach would not prevent the transferee member's deconsolidation in a stock distribution from qualifying under section 355. In other words, if such eligible property comprises the transferee member's entire trade or business, the deemed sale and purchase might be viewed as precluding the distribution from satisfying the ''active trade or business'' requirement in section 355(b). See section 355(b)(2)(C) (a corporation is treated as engaged in the active conduct of a trade or business only if, among other things, such trade or business was not acquired in a recognition transaction during the five-year period ending on the date of the distribution). The Treasury Department and the IRS are considering this issue and request comments for purposes of potential future guidance.

(ii) Other Alternative Approaches

The second alternative approach recommended by commenters (Modified Consolidated Acquisition Approach) would be identical to the Proposed Consolidated Acquisition Rules, except that the asset acquisition would not be treated as occurring on the day after the Deconsolidation Date for all Federal income tax purposes. Instead, the asset acquisition would be treated as occurring on the day after the Deconsolidation Date solely for purposes of determining (1) whether the requirements of section 168(k) are satisfied and, if so, (2) the amount, location, and timing of the transferee member's (or new target's) additional first year depreciation deduction with respect to the depreciable property. For all other Federal income tax purposes, the asset acquisition would be treated as occurring on the date such acquisition actually occurred.

The third alternative approach recommended by commenters (Frozen Depreciation Approach) is the same as the Delayed Bonus Approach, except that the transferee member would not be permitted to claim depreciation deductions during the interim period for the acquired assets (and the transferor member would not be required to take into account gain or loss from the asset acquisition under § 1.1502–13(c)).

The Treasury Department and the IRS have determined that, although the Modified Consolidated Acquisition Approach would address certain issues and uncertainties created by the Proposed Consolidated Acquisition Rules, this approach would create other issues and uncertainties by delaying the asset acquisition date for purposes of section 168(k) but not for other Federal income tax purposes. For instance, if the Modified Consolidated Acquisition Approach were applied to a deemed asset acquisition pursuant to a section 338(h)(10) election, the acquisition date would be delayed until one day after the Deconsolidation Date for purposes of section 168(k), but old target would be deemed to sell its assets and liquidate pursuant to § 1.338(h)(10)–1(d)(4)(i) on the actual acquisition date for all other Federal income tax purposes. This duality could complicate the calculation and allocation of the ADSP and AGUB among the target's assets by creating two separate acquisition dates, and thus two different dates on which such calculation and allocation must be determined. Therefore, these final regulations do not adopt the Modified Consolidated Acquisition Approach.

Similarly, with respect to the Frozen Depreciation Approach, the Treasury Department and the IRS have determined that holding the transferee member's depreciation deductions (and the transferor member's gain or loss on the asset acquisition) in abeyance could create some of the same issues as those identified by commenters with regard to the Proposed Consolidated Acquisition Rules. Such issues include the proper manner for reporting transactions that are part of a series of related transactions spanning multiple taxable years, and the appropriate way to account for changes in the depreciable property during the interim period. Accordingly, if the Frozen Depreciation Approach were to be adopted, the 90-day requirement might be required to limit the scope of such issues. Thus, these final regulations also do not adopt this approach.

(2) Application of the Five-Year Safe Harbor

As discussed in part I.B.1.a of this Summary of Comments and Explanation of Revisions section, the Five-Year Safe Harbor in § 1.168(k)–2(b)(3)(iii)(B)(*1*) of these final regulations provides that, in determining if the taxpayer or a predecessor previously had a depreciable interest in property, ''only the five calendar years immediately prior to the current calendar year in which the property is placed in service by the taxpayer, and the portion of such current calendar year before the placed-in-service date of the property without taking into account the applicable convention, are taken into account.'' Commenters requested confirmation that the Five-Year Safe Harbor applies for purposes of the Group Prior Use Rule and the Stock and Asset Acquisition Rule.

The Treasury Department and the IRS did not intend to require a different (and longer) ''look back'' period for consolidated group members than for other taxpayers. Accordingly, these final regulations clarify the Group Prior Use Rule to provide that a member of a consolidated group is treated as having a depreciable interest in property only if the group had a depreciable interest within the ''lookback period.'' This period, which is defined in these final regulations in accordance with the Five-Year Safe Harbor, includes both the five calendar years immediately prior to the current calendar year in which the property is placed in service by the member and the portion of such current calendar year before the placed-in-service date of the property, without taking into account the applicable convention. Similarly, these final regulations clarify that the Stock and Asset Acquisition Rule applies only if the corporation that joins the consolidated group had a depreciable interest in the property within the lookback period. These final regulations have modified *Examples 26, 27,* and *30* in § 1.168(k)–2(b)(3)(vii) of the 2019 Proposed Regulations (*Examples 1, 2,* and *3* in § 1.1502–68(d) of these final regulations) accordingly.

(3) Request for Additional Examples

One commenter requested several additional examples to clarify the application of the aforementioned special rules for consolidated groups. One such example would illustrate that the Group Prior Use Rule does not apply to situations in which an asset is acquired by a former group member (other than the member that directly held the asset) following the termination of the group. Another such example would address the consequences of an asset acquisition by one member of a consolidated group if, in an unrelated transaction, a corporation that previously had a depreciable interest in the property becomes a member of the same consolidated group.

The Treasury Department and the IRS agree that such examples would be helpful and have included them in these final regulations.

(4) Movement of Consolidated Rules to Regulations Under Section 1502

The Treasury Department and the IRS have determined that moving the section 168(k) rules for consolidated groups to the regulations under section 1502 would facilitate the identification and application of these rules by practitioners. Thus, these rules have been moved from § 1.168(k)–2(b)(3)(v) of the 2019 Proposed Regulations to new § 1.1502–68.

C. Acquisition of Property

1. Acquisition of a Trade or Business or an Entity

Section 1.168(k)–2(b)(5)(iii)(G) of the 2019 Proposed Regulations provides that a contract to acquire all or substantially all of the assets of a trade or business or to acquire an entity is binding if it is enforceable under State law against the parties to the contract and that certain conditions do not prevent the contract from being a binding contract. This proposed rule also provides that it applies to a contract for the sale of stock of a corporation that is treated as an asset sale as a result of an election under section 338.

The Treasury Department and the IRS are aware of potential questions regarding whether § 1.168(k)–2(b)(5)(iii)(G) of the 2019 Proposed Regulations also applies to a contract for the sale of stock of a corporation that is treated as an asset sale as a result of an election under section 336(e). The Federal income tax consequences of a section 336(e) election made with respect to a qualified stock disposition not described, in whole or in part, in section 355(d)(2) or (e)(2) are similar to the Federal income tax consequences of a section 338 election. See §§ 1.336–1(a)(1) and 1.336–2(b)(1). Accordingly, these final regulations clarify that § 1.168(k)–2(b)(5)(iii)(G) applies to a contract for the sale of stock of a corporation that is treated as an asset sale as a result of an election under section 336(e) made for a disposition described in § 1.336–2(b)(1).

2. Property Not Acquired Pursuant to a Written Binding Contract

Section 1.168(k)–2(b)(5)(v) of the 2019 Proposed Regulations provides that, in general, the acquisition date of property that the taxpayer acquires pursuant to a contract that does not meet the definition of a written binding contract in § 1.168(k)–2(b)(5)(iii) of the 2019 Final Regulations is the date on which the taxpayer paid or incurred more than 10 percent of the total cost of the property, excluding the cost of any land and preliminary activities. A commenter on the 2019 Proposed Regulations requested the bifurcation of a particular type of contract that the taxpayer has determined does not meet the definition of a written binding contract in § 1.168(k)–2(b)(5)(iii) of the 2019 Final Regulations. The contract at issue is cancelable at any time by the taxpayer/customer without penalty and requires the taxpayer to reimburse the contractor only for the costs the contractor has incurred, plus the contractor's profit margin, prior to the date the contractor receives a notice of cancellation by the taxpayer. For such a contract, the commenter requested that the final regulations allow the contract to be bifurcated into a binding contract for the period prior to the effective date of section 13201 of the TCJA and a separate non-binding contract for the period after the effective date of section 13201 of the TCJA. If the final regulations allow such a bifurcation, the commenter asserted that, if more than 10 percent of the costs of the project are paid or incurred by the taxpayer before the effective date of section 13201 of the TCJA, none of such costs are eligible for the 100-percent additional first year depreciation deduction, but all costs paid or incurred by the taxpayer after the effective date of section 13201 of the TCJA would meet the acquisition date requirements for the 100-percent additional first year depreciation deduction.

The Treasury Department and the IRS have determined that the change made in these final regulations to the component election (see part I.C.3 of this Summary of Comments and Explanation of Revisions section) generally addresses this comment. Therefore, the Treasury Department and the IRS decline to provide a special rule for this particular type of contract.

3. Component Election

Section 1.168(k)–2(c) of the 2019 Proposed Regulations allows a taxpayer to elect to treat one or more components acquired or self-constructed after September 27, 2017, of certain larger self-constructed property as being eligible for the additional first year depreciation deduction (Component Election). The larger self-constructed property must be qualified property under section 168(k)(2), as in effect before the enactment of the TCJA, for which the manufacture, construction, or production began before September 28, 2017. However, the election is not available for components of larger self-constructed property when such components are not otherwise eligible for the additional first year depreciation deduction.

a. Eligible Larger Self-Constructed Property

Pursuant to § 1.168(k)–2(c)(2)(ii) of the 2019 Proposed Regulations, larger self-constructed property that is placed in service by the taxpayer after December 31, 2019, or larger self-constructed property described in section 168(k)(2)(B) or (C), as in effect on the day before enactment of the TCJA, that is placed in service after December 31, 2020, is not eligible larger self-constructed property. Accordingly, any components of such property that are acquired or self-constructed after September 27, 2017, do not qualify for the Component Election. A commenter on the 2019 Proposed Regulations requested that the final regulations remove this cut-off date for when the larger self-constructed property must be placed in service because it does not reflect the intent of section 13201 of the TCJA of promoting capital investment, modernization, and growth. If a taxpayer constructs a building, the Treasury Department and the IRS are aware that taxpayers have questioned whether the larger self-constructed property is the building or the tangible personal property constructed as part of the building.

After considering these comments and the comment for property not acquired pursuant to a written binding contract (see part I.C.2 of this Summary of Comments and Explanation of Revisions section), the Treasury Department and the IRS have determined to expand the larger self-constructed property that is eligible for the Component Election. These final regulations provide that eligible larger self-constructed property also includes property that is manufactured, constructed, or produced for the taxpayer by another person under a written contract that does not meet the definition of a binding contract under § 1.168(k)–2(b)(5)(iii) of the 2019 Final Regulations (written non-binding contract) and that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income. Further, these final regulations remove the requirement that the larger self-constructed property be qualified property under section 168(k)(2), as in effect on the day before the enactment of the TCJA, and instead provide that the larger self-constructed property must be (i) MACRS property with a recovery period of 20 years or less, computer software, water utility property, or qualified improvement property under section 168(k)(3) as in effect on the day before the enactment date of the TCJA, and (ii) qualified property under § 1.168(k)–2(b) of the 2019 Final Regulations and these final regulations, determined without regard to the acquisition date requirement in § 1.168(k)–2(b)(5), for which the taxpayer begins the manufacture, construction, or production before September 28, 2017. As a result of this change, the cut-off dates for when the larger self-constructed property must be placed in service by the taxpayer now align with the placed-in-service dates under section 168(k)(6) and § 1.168(k)–2(b)(4)(i). Because the Component Election is an exception to the acquisition date requirements in § 1.168(k)–2(b)(5)(iv) of the 2019 Final Regulations and § 1.168(k)–2(b)(5)(v) of these final regulations, and such rules do not apply to qualified film, television, and live theatrical productions, the Treasury Department and the IRS have determined to retain the rule in § 1.168(k)–2(c) of the 2019 Proposed Regulations to exclude these productions from being eligible for the Component Election.

With regard to the taxpayers' question of whether the larger self-constructed property is the building constructed by the taxpayer or the tangible personal property constructed as part of the building, all tangible personal property constructed as part of that building generally is MACRS property with a recovery period of 20 years or less. As a result, the Treasury Department and the IRS have determined that such tangible personal property is the larger self-constructed property for purposes of the Component Election if the construction of all tangible personal property of the building began before September 28, 2017, and any eligible component of such tangible personal property is eligible for the Component Election. Accordingly, these final regulations clarify that all property that is constructed as part of residential rental property, nonresidential real property, or an improvement to such property, and that is MACRS property with a recovery period of 20 years or less, computer software, water utility property, or qualified improvement property under section 168(k)(3) as in effect on the day before the enactment date of the TCJA, is the larger self-constructed property for purposes of the Component Election.

b. Eligible Components

To be eligible for the Component Election, § 1.168(k)–2(c)(3) of the 2019 Proposed Regulations provides that a component of the larger self-constructed property must be qualified property under § 1.168(k)–2(b) of the 2019 Final Regulations and these final regulations that is acquired or self-constructed by the taxpayer after September 27, 2017. These final regulations retain this rule. In addition, these final regulations clarify that the acquisition date of a component acquired pursuant to a written binding contract is determined under § 1.168(k)–2(b)(5)(ii)(B) of the 2019 Final Regulations. If a component is acquired or self-constructed pursuant to a written non-binding contract, these final regulations provide that the rules under § 1.168(k)–2(b)(5)(v) of these final regulations determine the acquisition date of such component or when manufacture, construction, or production of such component begins. These final regulations also include a conforming change to § 1.168(k)–2(b)(5)(v) clarifying that these rules apply to property that is self-constructed pursuant to a written non-binding contract, and amend § 1.168(k)–2(d)(3) to provide a rule similar to the rule in § 1.168(k)–2(b)(5)(v) for property that is described in section 168(k)(2)(B) or (C) and is not acquired pursuant to a written binding contract.

D. Property Described in Section 168(k)(2)(B)

Section 1.168(k)–2(e)(1)(iii) of the 2019 Proposed Regulations provides that rules similar to the rules in section 4.02(1)(b) of Notice 2007–36 (2007–17 I.R.B. 1000) apply for determining the amounts of unadjusted depreciable basis attributable to the manufacture, construction, or production of property described in section 168(k)(2)(B) before January 1, 2027. These final regulations clarify that such rules apply regardless of whether the manufacture, construction, or production of such property is pursuant to a written binding contract or a written non-binding contract.

II. Definitions

A. Depreciable Property

Section 1.168(b)–1(a)(1) defines the term ''depreciable property'' for purposes of section 168. See also § 1.168(k)–2(b)(1). In connection with its comments on the special rules for consolidated groups in § 1.168(k)–2(b)(3)(v) of the 2019 Proposed Regulations, a commenter requested the final regulations provide either an explicit definition of that term or an alternate term that is expressly limited to property the nature of which is eligible for the additional first year depreciation deduction.

The definition of ''depreciable property'' in § 1.168(b)–1(a)(1) is the same definition of that term in § 1.168(k)–1(a)(2)(i) for purposes of section 168(k) as in effect before the enactment of the TCJA. The Treasury Department and the IRS are not aware of problems with applying the definition under either § 1.168(b)–1(a)(1) or § 1.168(k)–1(a)(2)(i). Moreover, the Treasury Department and the IRS have determined that such definition clearly describes which property is depreciable property. Accordingly, the Treasury Department and the IRS decline to adopt this comment. However, the rules in § 1.1502–68 for consolidated groups use the term ''eligible property'' to identify the types of depreciable property eligible for the additional first year depreciation deduction.

B. Qualified Improvement Property

Section 1.168(b)–1(a)(5) of the 2019 Final Regulations defines the term ''qualified improvement property'' for purposes of section 168. Section 168(e)(6), as amended by section 13204 of the TCJA, and § 1.168(b)–1(a)(5)(i)(A) and (a)(5)(ii) provide the definition of that term for improvements placed in service after December 31, 2017. Section 2307 of the CARES Act amended section 168(e)(3)(E), (e)(6), and (g)(3)(B). Section 2307(a)(1)(A) of the CARES Act added a new clause (vii) to the end of section 168(e)(3)(E) to provide that qualified improvement property is classified as 15-year property. Section 2307(a)(1)(B) of the CARES Act amended the definition of qualified improvement property in section 168(e)(6) by providing that the improvement must be ''made by the taxpayer.'' In addition, section 2307(a)(2) of the CARES Act amended the table in section 168(g)(3)(B) to provide a recovery period of 20 years for qualified improvement property for purposes of the alternative depreciation system under section 168(g). These amendments to section 168(e) and (g) are effective as if included in section 13204 of the TCJA and, therefore, apply to property placed in service after December 31, 2017.

As a result of these changes by section 2307 of the CARES Act, these final regulations amend § 1.168(b)–1(a)(5)(i)(A) to provide that the improvement must be made by the taxpayer. The Treasury Department and the IRS are aware of questions regarding the meaning of ''made by the taxpayer'' with respect to third-party construction of the improvement and the acquisition of a building in a transaction described in section 168(i)(7)(B) (pertaining to treatment of transferees in certain nonrecognition transactions) that includes an improvement previously made by, and placed in service by, the transferor or distributor of the building. In this regard, the Treasury Department and the IRS believe that an improvement is made by the taxpayer if the taxpayer makes, manufactures, constructs, or produces the improvement for itself or if the improvement is made, manufactured, constructed, or produced for the taxpayer by another person under a written contract. In contrast, if a taxpayer acquires nonresidential real property in a taxable transaction and such nonresidential real property includes an improvement previously placed in service by the seller of such nonresidential real property, the improvement is not made by the taxpayer.

Consistent with section 168(i)(7) (pertaining to treatment of transferees in certain nonrecognition transactions), the Treasury Department and the IRS also believe that if a transferee taxpayer acquires nonresidential real property in a transaction described in section 168(i)(7)(B) (for example, section 351 or 721), any improvement that was previously made by, and placed in service by, the transferor or distributor of such nonresidential real property and that is qualified improvement property in the hands of the transferor or distributor is treated as being made by the transferee taxpayer, and thus is qualified improvement property in the hands of the transferee taxpayer, but only for the portion of its basis in such property that does not exceed the transferor's or distributor's adjusted depreciable basis of this property.

However, because the basis is determined by reference to the transferor's or distributor's adjusted basis in the improvement, the transferee taxpayer's acquisition does not satisfy section 179(d)(2)(C) and § 1.179–4(c)(1)(iv) and thus, does not satisfy the used property acquisition requirements of § 1.168(k)–2(b)(3)(iii). Accordingly, the qualified improvement property is not eligible for the additional first year depreciation deduction in the hands of the transferee taxpayer, except as provided in § 1.168(k)–2(g)(1)(iii).

An example has been added to § 1.168(k)–2(b)(2)(iii) to illustrate the eligibility of qualified improvement property for the additional first year depreciation deduction.

C. Predecessor and Class of Property

Section 1.168(k)–2(a)(2)(iv)(B) of the 2019 Final Regulations defines a predecessor as including a transferor of an asset to a transferee in a transaction in which the transferee's basis in the asset is determined, in whole or in part, by reference to the basis of the asset in the hands of the transferor. A commenter requested clarification of whether this definition was intended to apply only with respect to the specific property transferred or more broadly. The Treasury Department and the IRS intended the definition of a "predecessor" in § 1.168(k)–2(a)(2)(iv)(B) of the 2019 Final Regulations to be property-specific. Similarly, the Treasury Department and the IRS intended the definition of a "class of property" in § 1.168(k)–2(f)(1)(ii)(G) of the 2019 Final Regulations (regarding basis adjustments in partnership assets under section 743(b)) to be partner-specific. Accordingly, these final regulations amend § 1.168(k)–2(a)(2)(iv)(B) of the 2019 Final Regulations to substitute "the" for "an", and these final regulations amend § 1.168(k)–2(f)(1)(ii)(G) of the 2019 Final Regulations to substitute "Each" for "A".

Pursuant to § 1.168(k)–2(a)(2)(iv)(E) of the 2019 Final Regulations, a transferor of an asset to a trust is a predecessor with respect to the trust. The Treasury Department and the IRS intended that this provision apply only to transfers involving carryover basis. Because § 1.168(k)–2(a)(2)(iv)(B) of the 2019 Final Regulations applies to such transfers, these final regulations remove § 1.168(k)–2(a)(2)(iv)(E) of the 2019 Final Regulations.

Statement of Availability of IRS Documents

The IRS Revenue Procedures and Revenue Rulings cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

Applicability Date

The definition of qualified improvement property in § 1.168(b)–1(a)(5)(i)(A) of these final regulations applies to depreciable property placed in service by the taxpayer after December 31, 2017. Sections 1.168(k)–2 and 1.1502–68 of these final regulations apply to depreciable property, including certain components, acquired after September 27, 2017, and placed in service, or certain plants planted or grafted, as applicable, by the taxpayer during or after the taxpayer's taxable year that begins on or after January 1, 2021. However, a taxpayer may choose to apply §§ 1.168(k)–2 and 1.1502–68 of these final regulations to depreciable property, including certain components, acquired and placed in service after September 27, 2017, or certain plants planted or grafted after September 27, 2017, as applicable, by the taxpayer during a taxable year ending on or after September 28, 2017, provided the taxpayer applies all rules in §§ 1.168(k)–2 and 1.1502–68 (to the extent relevant) in their entirety and in a consistent manner. See section 7805(b)(7).

In the case of property described in § 1.1502–68(e)(2)(i) of these final regulations that is acquired in a transaction that satisfies the requirements of § 1.1502–68(c)(1)(ii) or (c)(2)(ii) of these final regulations, the taxpayer may apply §§ 1.168(k)–2 and 1.1502–68 of these final regulations for such property only if the rules are applied, in their entirety and in a consistent manner, by all parties to the transaction, including the transferor member, the transferee member, and the target, as applicable, and the consolidated groups of which they are members, for the taxable year(s) in which the transaction occurs and the taxable year(s) that includes the day after the deconsolidation date, as defined in § 1.1502–68(a)(2)(iii) of these final regulations.

Additionally, once a taxpayer applies §§ 1.168(k)–2 and 1.1502–68 of these final regulations, in their entirety, for a taxable year, the taxpayer must continue to apply §§ 1.168(k)–2 and 1.1502–68 of these final regulations, in their entirety, for the taxpayer's subsequent taxable years.

Alternatively, a taxpayer may rely on the proposed regulations under section 168(k) in regulation project REG–106808–19 (84 FR 50152; 2019–41 I.R.B. 912), with respect to depreciable property, including certain components, acquired and placed in service after September 27, 2017, or certain plants planted or grafted after September 27, 2017, as applicable, by the taxpayer during a taxable year ending on or after September 28, 2017, and before the taxpayer's first taxable year that begins on or after January 1, 2021, if (1) the taxpayer follows the proposed regulations in their entirety, except for the Partnership Lookthrough Rule in proposed § 1.168(k)–2(b)(3)(iii)(B)(*5*), and in a consistent manner, and (2) all members of a consolidated group consistently rely on the same set of rules. Further, if such property is acquired in a transaction described in proposed § 1.168(k)–2(b)(3)(v)(C) or (D), the taxpayer may rely on the proposed regulations under section 168(k) for such property only if the rules are followed, in their entirety and in a consistent manner, by all parties to the transaction, including the transferor member, the transferee member, and the target, as applicable, and the consolidated groups of which they are members, for the taxable year(s) in which the transaction occurs and the taxable year(s) that includes the day after the Deconsolidation Date. For this purpose, the terms transferor member, transferee member, and target have the meaning provided in proposed § 1.168(k)–2(b)(3)(v)(C) and (D), and the term Deconsolidation Date has the meaning provided in proposed § 1.168(k)–2(b)(3)(v)(C)(*1*).

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 12866, 13563, and 13771 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including (i) potential economic, environmental, and public health and safety effects, (ii) potential distributive impacts, and (iii) equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

These final regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11,

2018) (MOA) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs has designated these regulations as economically significant under section 1(c) of the MOA. Accordingly, the OMB has reviewed these regulations.

A. Background

i. Bonus Depreciation

In general, section 168(k) allows taxpayers to immediately deduct some portion of investment in certain types of capital assets referred to as the ''bonus percentage.'' This provision is colloquially referred to as ''bonus depreciation.'' Public Law 115–97, commonly referred to as the Tax Cuts and Jobs Act (TCJA), increased the bonus percentage from 50 percent to 100 percent for qualified property acquired after September 27, 2017, which accelerates depreciation deductions relative to previous law. The TCJA also removed the ''original use'' requirement, meaning that taxpayers could claim bonus depreciation on certain ''used'' property. The TCJA made several other modest changes to the operation of section 168(k). First, it excluded from the definition of qualified property any property used by rate-regulated utilities and certain firms (primarily automobile dealerships) with ''floor plan financing indebtedness'' as defined under section 163(j). Furthermore, section 168(k)(2)(a)(ii)(IV) and (V) allowed qualified film, television, and live theatrical productions (as defined under Section 181) to qualify for bonus depreciation.

The Treasury Department and the IRS promulgated regulations under § 1.168(k)–2 to generally provide structure and clarity for the implementation of section 168(k). Such regulations were proposed as REG–104397–18 (2018 Proposed Regulations) and finalized as TD 9874 (2019 Final Regulations). However, the Treasury Department and the IRS determined that there remained several outstanding issues requiring clarification that should be subject to notice and comment. In response, the Treasury Department and the IRS issued an additional notice of proposed rulemaking as REG 106808–19 (2019 Proposed Regulations). These final regulations finalize the 2019 Proposed Regulations with only minor changes.

These final regulations (these regulations) address ambiguities related to the operation of section 168(k)(9), which describes property that is ineligible for bonus depreciation. Second, these regulations create a de minimis rule which provides that a taxpayer will be deemed not to have had a prior depreciable interest in a property—and thus that property will be eligible for bonus depreciation in that taxpayer's hands (assuming it otherwise qualifies)—if the taxpayer previously disposed of that property within 90 days of the date on which that property was originally placed in service. Third, these regulations provide for the treatment of an asset acquisition as part of a sale of a member of a consolidated group from one group to another. Fourth, these regulations clarify the treatment of a series of related transactions. Finally, these regulations provide an election to treat certain components of larger self-constructed property as eligible for the increased bonus percentage even if the construction of such larger self-constructed property began before September 28, 2017.

B. Economic Analysis

1. No-Action Baseline

In this analysis, the Treasury Department and the IRS assess the benefits and costs of these regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

2. Summary of Economic Effects

These regulations provide certainty and consistency in the application of section 168(k) by providing definitions and clarifications regarding the statute's terms and rules. In the absence of the guidance provided in these regulations, the chance that different taxpayers might interpret the statute differently is exacerbated. For example, two similarly situated taxpayers might interpret the statutory provisions pertaining to the definition of property eligible for bonus depreciation differently, with one taxpayer pursuing a project that another comparable taxpayer might decline because of a different interpretation of whether property is eligible for bonus depreciation under 168(k). If this second taxpayer's activity is more profitable, an economic loss arises. Similar situations may arise under each of the provisions addressed by these regulations. Certainty and clarity over tax treatment generally also reduce compliance costs for taxpayers and increase overall economic performance.

An economic loss might also arise if all taxpayers have similar interpretations under the baseline of the tax treatment of particular deductible items but those interpretations differ slightly from the interpretation Congress intended for deductions of these items. For example, these regulations may specify a tax treatment that few or no taxpayers would adopt in the absence of specific guidance but that nonetheless advances Congressional intent. In these cases, guidance provides value by bringing economic decisions closer in line with the intent and purpose of the statute.

While no guidance can curtail all differential or inaccurate interpretations of the statute, these regulations significantly mitigate the chance for differential or inaccurate interpretations and thereby increase economic efficiency.

Because these regulations clarify the tax treatment of bonus depreciation for certain taxpayers, there is the possibility that business decisions may change as a result of these regulations relative to the no-action baseline. Averaged across taxpayers in the economy, these regulations will tend to expand the pool of property that is eligible for bonus depreciation, thus reducing effective tax rates for affected taxpayers, relative to the no-action baseline. This reduction in effective tax rates, viewed in isolation, is generally projected to increase economic activity by these taxpayers relative to the no-action baseline.

3. Economic Analysis of Specific Provisions

i. Property Excluded From Bonus by Section 168(k)(9)

Section 168(k)(9) provides that property used by certain businesses is not eligible for bonus depreciation. These businesses include certain rate-regulated utilities and certain firms (primarily motor vehicle dealerships) with floor plan financing indebtedness and total interest expense that exceeds certain thresholds.

These regulations clarify that those taxpayers that lease property to such businesses described by section 168(k)(9) may claim bonus depreciation, so long as other requirements of section 168(k) are met. This approach broadly follows existing normalization rules (which pre-date TCJA and which provide generally for the reconciliation of tax income and book income for regulatory purposes for utilities), which provide that lessors to public utilities are not bound by such rules so long as they themselves are not a public utility. The Treasury Department and the IRS expect that this guidance will be easy for taxpayers to interpret and comply with. To the extent that lessors can claim bonus depreciation, it is plausible that the market-clearing lease price for such assets will fall, potentially enabling some expansions of output and contributing to economic growth.

These regulations next clarify which businesses fall under the umbrella of section 168(k)(9)(A) (utilities) and section 168(k)(9)(B) (firms with floor plan financing indebtedness). In regards to section 168(k)(9)(A), which applies to property that is ''primarily used'' in certain utilities businesses, these regulations provide that the ''primary use'' of property is consistent with how primary use is determined in existing regulations under section 167. This application should be familiar to taxpayers, and thus relatively easy to comply with.

The statutory language of section 168(k)(9)(B) is somewhat ambiguous, requiring more substantive clarifications. First, section 168(k)(9)(B) provides that firms with floor plan financing indebtedness are ineligible for bonus depreciation ''if the floor plan financing interest [from such indebtedness] was taken into account under [section 163(j)(1)(C)].'' These regulations clarify that such interest is in fact ''taken into account'' only if the firm in fact received a benefit from section 163(j)(1)(C)—*i.e.,* if total business interest expense (including floor plan financing interest) exceeds business interest income plus 30 percent (50 percent for taxable years beginning during 2019 and 2020) of adjusted taxable income. This decision allows more firms to claim bonus depreciation than if the Treasury Department and the IRS had made the opposite interpretation (deeming all firms with floor plan financing interest to be ineligible for bonus depreciation, regardless of whether the firm received a benefit from section 163(j)(1)(C)). However, the Treasury Department and the IRS expect that most taxpayers would have interpreted the phrase ''taken into account'' in the same manner as these regulations in the absence of these regulations, implying that the economic effects of this provision are modest.

An additional ambiguity in section 168(k)(9)(B) pertains to the length of time that the section applies to a given firm. The section refers to a ''trade or business that *has had* floor plan financing indebtedness . . . if the floor plan financing interest related to such indebtedness *was taken into account* under [section 163(j)(1)(C)]'' (emphasis added). Consider a firm (Example A) that received a benefit from section 163(j)(C)(1) in the 2021 tax year (meaning that its interest deduction would have been smaller if not for section 163(j)(C)(1)) but not in the 2022 tax year or any other later year. The Treasury Department and the IRS considered two options to address the length of time to which this designation would apply: (i) In perpetuity, such that such businesses would be forever ineligible for bonus depreciation; or (ii) annually; that is, section 168(k)(9)(B) is determined on an annual basis. Under this option, the firm in Example A would not be eligible for bonus depreciation in 2021, but so long as the other requirements were met, it would be eligible for bonus depreciation in 2022.

These regulations adopt the second option. This interpretation enables more firms to be eligible for bonus depreciation in more years, relative to the alternative regulatory approach, and would thus potentially increase investment by such firms. The Treasury Department and the IRS expect that a substantial proportion of taxpayers would have come to a different conclusion regarding the interpretation of this timing in the absence of these regulations. Therefore, this provision could be expected to affect economic activity by these taxpayers relative to the no-action baseline.

The Treasury Department and the IRS engaged in an analysis of these effects based on historical tax data, parameter values from the economic literature for the effect of bonus depreciation on investment, and assumptions regarding taxpayer interpretations in the absence of these regulations. This analysis projects that this provision will cause investment to increase in this industry by no greater than $55 million in any year, and approximately $25 million per year on average over the period from 2019–2028, relative to the no-action baseline. Additionally, this analysis projects that some share of this increased investment will reduce investment in other industries through crowd-out effects.

ii. Prior Depreciable Interest

In general, to be statutorily eligible for bonus depreciation, a given property may not have been owned and depreciated by the same firm in the past. This requirement has the effect of penalizing any tax-driven ''churning'' of assets, whereby a firm could sell and soon thereafter repurchase the same asset in order to claim the 100 percent deduction. The 2019 Final Regulations defined ''ownership'' for this purpose as having a prior depreciable interest. These regulations create an exception that provides that a taxpayer does not have a prior depreciable interest in a given property if the taxpayer disposed of the property within 90 days of the initial date when the property was placed in service (additional requirements apply to the extent the original acquisition occurred prior to September 28, 2017). The Treasury Department and the IRS instituted this rule to address situations where temporary ownership of property is necessary to facilitate certain lease arrangements so that the property subsequently purchased off-lease is not ineligible for bonus depreciation and to coordinate with the syndication transaction rules of section 168(k)(2)(E)(iii).

The Treasury Department and the IRS do not anticipate substantial economic effects of this provision. Nevertheless, it will generally have the effect of causing more property to be eligible for bonus depreciation (increasing incentives to invest) relative to the no-action baseline. This provision is not expected to meaningfully increase tax-driven or economically wasteful churning of assets relative to the no-action baseline.

iii. Group Prior Use Rule

These regulations clarify several aspects of the ''Group Prior Use Rule'' as introduced in the 2018 Proposed Regulations. Under that rule, all members of a consolidated group are treated as having had a depreciable interest in a property if *any* member of the consolidated group had such a depreciable interest. First, these final regulations clarify that the rule ceases to be in effect once the consolidated group terminates as a result of joining another consolidated group. Second, these regulations clarify that the Group Prior Use Rule does not apply to a corporation after it deconsolidates from the consolidated group, so long as that corporation did not in fact previously own that property. As is the case with the prior use rules generally, the Treasury Department and the IRS do not anticipate large economic effects as a result of this section of these regulations relative to the no-action baseline.

iv. Purchases of Assets as Part of Acquisition of Entire Business

These regulations clarify the procedure for certain purchases of assets by a given corporation from a related party that are a part of an integrated plan involving the selling of that corporation from one group to another. Specifically, these regulations provide that the deduction for bonus depreciation is allowed in such circumstances and should be claimed by the acquiring group. These regulations provide for a similar treatment in the case of deemed acquisitions in the case of an election under section 338(h)(10) or section 336(e). These rules cause the tax treatment to reflect the economic reality, in which the acquiring group is bearing the economic outlay of the asset purchase, and that acquiring group had no economic prior depreciable interest. By aligning the tax consequences with the economic allocations, this treatment minimizes potential distortions caused by the anti-churning rules relative to the no-action baseline.

v. Component Rule Election

In 2010, Congress increased the bonus percentage from 50 percent to 100 percent for property placed in service between September 9, 2010 and December 31, 2011. In 2011, the IRS issued Revenue Procedure 2011–26 to allow taxpayers to elect to have the 100 percent bonus rate apply to components of larger self-constructed property whose construction began before September 9, 2010, so long as (1) the components were acquired (or self-constructed) after that date and (2) the larger self-constructed property itself otherwise qualifies for bonus depreciation generally. These regulations provide an analogous rule, replacing September 9, 2010 with September 28, 2017. This provision will allow more property to qualify for 100 percent bonus depreciation relative to the no-action baseline. Furthermore, this provision provides neutrality between taxpayers who acquire distinct, smaller pieces of depreciable property and those taxpayers that invest a similar amount in fewer, larger pieces of depreciable property whose construction takes place over a longer period of time. By treating similar taxpayers (and similar choices) similarly, this rule enhances economic efficiency by minimizing tax-related distortions. However, the Treasury Department and the IRS project these rules to have only a modest effect on future economic decisions relative to the no-action baseline. These rules affect only taxpayers (1) that acquire (or self-construct) components after September 27, 2017 and (2) that began construction of the larger self-constructed property prior to September 28, 2017 (approximately 32 months ago). The Treasury Department and the IRS expect relatively few taxpayers to be affected by this provision going forward.

vi. Series of Related Transactions

The 2018 Proposed Regulations provided that, in a series of related transactions, the relationship between the transferor and transferee of an asset was determined only after the final transaction in the series (Series of Related Transactions Rule). Commenters had expressed confusion regarding whether this rule applies to testing whether parties are related under section 179(d)(2), or whether it applies more broadly (*e.g.,* in determining whether the taxpayer had a prior depreciable interest). These regulations clarify that this Series of Related Transactions Rule is intended only to test the relatedness of the parties involved in the series of related transactions.

These regulations further revise the Series of Related Transactions Rule to address its application in various situations. Under these regulations, relatedness is tested after each step of the series of related transactions and between the original transferor in the series and the direct transferor, with a substantial exception that any intermediary (*i.e.,* a taxpayer other than the original transferor or ultimate transferee) is disregarded so long as that intermediary (1) never places the property in service or (2) disposes of the property in the same taxable year in which it was placed in service. Testing relatedness after each step in the transaction allows certain intermediaries in the series to claim bonus depreciation if they maintained use of the property for a non-trivial length of time. The Treasury Department and the IRS do not predict substantial economic effects of this provision relative to the no-action baseline.

vii. Miscellaneous

These regulations put forward rules to the extent existing regulations apply in slightly new contexts. In particular, these regulations clarify when a binding contract is in force to acquire all or substantially all the assets of a trade or business. Additionally, consistent with the rules of § 1.168(d)–1(b)(4), these regulations provide that, for the purpose of determining whether the mid-quarter convention applies, depreciable basis is not reduced by the amount of bonus depreciation.

The Treasury Department and the IRS do not anticipate large economic effects of these clarifications relative to the no-action baseline, though the additional clarity provided by these regulations will likely reduce compliance burdens.

4. Number of Affected Taxpayers

The most substantial components of these regulations affect the ability of dealers of motor vehicles to claim bonus depreciation. Based on data from tax year 2017, the Treasury Department and the IRS estimate that there are approximately 94,000 taxpayers in that industry who may be affected by these regulations based on the taxpayer's voluntarily reported NAICS code. Of this 94,000, 14,000 are filers of Form 1120, 42,000 are filers of Form 1120S, 12,000 are filers of Form 1065, and 26,000 are filers of Form 1040. Additionally, other components of these regulations may have a very slight effect on all taxpayers that claim bonus depreciation. Including such taxpayers, these regulations may affect approximately 2.85 million taxpayers, including 160,000 filers of Form 1120, 560,000 filers of Form 1120S, 400,000 filers of Form 1065, and 1.75 million filers of Form 1040.

II. Paperwork Reduction Act

The collections of information in these final regulations are in §§ 1.168(k)–2(c) and 1.1502–68(c)(4). The collection of information in § 1.168(k)–2(c) is an election that a taxpayer may make to treat one or more components acquired or self-constructed after September 27, 2017, of certain larger self-constructed property as being eligible for the 100-percent additional first year depreciation deduction under section 168(k). The larger self-constructed property must be MACRS property with a recovery period of 20 years or less, computer software, water utility property, or qualified improvement property placed in service by the taxpayer after September 27, 2017, and before January 1, 2018, that is qualified property under section 168(k)(2) for which the manufacture, construction, or production began before September 28, 2017. The election is made by attaching a statement to a Federal income tax return indicating that the taxpayer is making the election under § 1.168(k)–2(c) and whether the taxpayer is making the election for all or some of the components described in § 1.168(k)–2(c).

The collection of information in § 1.1502–68(c)(4) is an election that a taxpayer may make to not claim the additional first year depreciation deduction for qualified property, and which § 1.1502–68(c)(1) or (2) would otherwise require the taxpayer to claim such deduction when a member of a consolidated group acquires from another member property eligible for the additional first year depreciation deduction (or stock of a third member holding such property), and the acquirer member (and acquired member, if applicable) then leaves the consolidated group. To make the election, the corporation must attach a statement to its timely filed federal income tax return (including extensions) for the taxable year that begins after the date on which it leaves the consolidated group. The statement must describe the transaction(s) to which § 1.1502–68(c)(1) or (2) would apply and state that the corporation elects not to claim the additional first year depreciation deduction for any property transferred in such transaction(s).

For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA), the reporting burden associated with § 1.168(k)–2(c) will be reflected in the PRA submission associated with income tax returns in the Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series (for OMB control numbers, see chart at the end of this part II of this Special Analysis section). The estimate for the number of impacted filers with respect to the collection of information described in this part is 0 to 41,775 respondents. Partial data was available to directly estimate the upper bound for the number of impacted filers. The upper bound estimate is based on the change in volume of federal income tax return filers that amended a 2017 or 2018 filing a nonzero entry on Form 4562 Line 14 (additional first year depreciation deduction).

For purposes of the PRA, the reporting burden associated with § 1.1502–68(c)(4) will be reflected in the PRA submission associated with income tax returns in the Form 1120 series (for OMB control number, see chart at the end of this part II of this Special Analysis section). The estimate for the number of impacted filers with respect to the collection of information described in this part is 0 to 500 respondents. Partial data was available to estimate the upper bound for the number of impacted filers. The upper bound estimate is based on the observed volume of federal income tax return filers that are a subsidiary corporation of a parent, have a history of reporting depreciation on a Form 4562, and based on the parent's consolidated federal tax return filing in 2017 and 2018, the subsidiary deconsolidated from the consolidated group.

The IRS estimates the number of affected filers to be the following:

TAX FORMS IMPACTED

Collection of information	Number of respondents (estimated)	Forms to which the information may be attached
Section 1.168(k)–2(c) Election for components of larger self-constructed property for which the manufacture, construction, or production begins before September 28, 2017.	0–41,775	Form 1120 series, Form 1040 series, Form 1041 series, and Form 1065 series.
Section 1.1502–68(c)(4) Election to not claim the additional first year depreciation deduction under § 1.1502–68(c)(1) or (2) for property owned by a subsidiary corporation of a consolidated group that is qualified property after the subsidiary corporation leaves the consolidated group.	0–500	Form 1120 series.

Source: IRS:RAAS:KDA (CDW 5–16–20 for § 1.168(k)–2(c) election and CDW 5–15–20 for § 1.1502–68(c)(4)(i) election).

The current status of the PRA submissions related to the tax forms that will be revised as a result of the information collections in the section 168(k) regulations and the section 1502 regulations is provided in the accompanying table. As described earlier, the reporting burdens associated with the information collections in the regulations are included in the aggregated burden estimates for OMB control numbers 1545–0123 (which represents a total estimated burden time for all forms and schedules for corporations of 3.344 billion hours and total estimated monetized costs of $61.558 billion ($2019)), 1545–0074 (which represents a total estimated burden time, including all other related forms and schedules for individuals, of 1.721 billion hours and total estimated monetized costs of $33.267 billion ($2019)), and 1545–0092 (which represents a total estimated burden time, including all other related forms and schedules for trusts and estates, of 307,844,800 hours and total estimated monetized costs of $9.950 billion ($2016)). The IRS is currently in the process of revising the methodology it uses to estimate burden and costs for OMB control number 1545–0092. It is expected that future estimates under this OMB control number will include dollar estimates of annual burden costs to taxpayers calculated using this revised methodology. The overall burden estimates provided for the OMB control numbers below are aggregate amounts that relate to the entire package of forms associated with the applicable OMB control number and will in the future include, but not isolate, the estimated burden of the tax forms that will be created or revised as a result of the information collections in the regulations. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by the regulations. These burdens have been reported for other regulations that rely on the same OMB control numbers to conduct information collections under the PRA, and the Treasury Department and the IRS urge readers to recognize that these numbers are duplicates and to guard against over counting the burden that the regulations that cite these OMB control numbers imposed prior to the TCJA. No burden estimates specific to the forms affected by the regulations are currently available. The Treasury Department and the IRS have not estimated the burden, including that of any new information collections, related to the requirements under the regulations. For the OMB control numbers discussed earlier, the Treasury Department and the IRS estimate PRA burdens on a taxpayer-type basis rather than a provision-specific basis. Those estimates would capture changes made by the TCJA and those that arise out of discretionary authority exercised in these final regulations and other regulations that affect the compliance burden for those forms.

The Treasury Department and the IRS request comments on all aspects of information collection burdens related to these final regulations, including estimates for how much time it would take to comply with the paperwork burdens described earlier for each relevant form and ways for the IRS to minimize the paperwork burden. In addition, when available, drafts of IRS forms are posted for comment at *https://apps.irs.gov/app/picklist/list/draftTaxForms.htm.* IRS forms are available at *https://www.irs.gov/forms-instructions.* Forms will not be finalized until after they have been approved by OMB under the PRA.

Form	Type of filer	OMB No(s).	Status
Form 1040	Individual (NEW Model)	1545–0074	Approved by OIRA through 1/31/2021.
	Link: *https://www.federalregister.gov/documents/2019/09/30/2019-21066/proposed-collection-comment-request-for-form-1040-form-1040nr-form-1040nr-ez-form-1040x-1040-sr-and*		
Form 1041	Trusts and estates	1545–0092	Approved by OIRA through 5/3/2022.
	Link: *https://www.federalregister.gov/documents/2018/04/04/2018-06892/proposed-collection-comment-request-for-form-1041*		
Forms 1065 and 1120	Business (NEW Model)	1545–0123	Approved by OIRA through 1/31/2021.
	Link: *https://www.federalregister.gov/documents/2019/09/30/2019-21068/proposed-collection-comment-request-for-forms-1065-1066-1120-1120-c-1120-f-1120-h-1120-nd-1120-s*		

III. Regulatory Flexibility Act

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Section 168(k) generally affects taxpayers that own and use depreciable property in their trades or businesses or for their production of income. The reporting burden in § 1.168(k)–2(c) generally affects taxpayers that elect to have the 100-percent additional first year depreciation deduction apply to components that are acquired or self-constructed after September 27, 2017, of depreciable property for which the manufacture, construction, or production began before September 28, 2017. The election is made by attaching a statement to a Federal income tax return indicating that the taxpayer is making the election under § 1.168(k)–2(c) and whether the taxpayer is making this election for all or some of the components described in § 1.168(k)–2(c).

The reporting burden in § 1.1502–68(c)(4) generally affects taxpayers that elect to not claim the additional first year depreciation deduction for qualified property, and which § 1.1502–68(c)(1) or (2) would otherwise require the taxpayer to claim such deduction when a member of a consolidated group acquires from another member property eligible for the additional first year depreciation deduction (or stock of a third member holding such property), and the acquirer member (and acquired member, if applicable) then leaves the consolidated group. To make the election, the corporation must attach a statement to its timely filed federal income tax return (including extensions) for the taxable year that begins after the date on which it leaves the consolidated group. The statement must describe the transaction(s) to which § 1.1502–68(c)(1) or (2) would apply and state that the corporation elects not to claim the additional first year depreciation deduction for any property transferred in such transaction(s).

For purposes of the PRA, the Treasury Department and the IRS estimate that there are 0 to 41,775 respondents of all sizes that are likely to be impacted by the collection of information in § 1.168(k)–2(c). Most of these filers are likely to be small entities (business entities with gross receipts of $25 million or less pursuant to section 448(c)(1)). The Treasury Department and the IRS estimate the number of filers affected by § 1.168(k)–2(c) to be the following:

Form	Gross receipts of $25 million or less	Gross receipts over $25 million
Form 1040	0–7,000 Respondents (estimated)	0–25 Respondents (estimated).
Form 1065	0–12,000 Respondents (estimated)	0–500 Respondents (estimated).
Form 1120	0–1,500 Respondents (estimated)	0–750 Respondents (estimated).
Form 1120S	0–19,000 Respondents (estimated)	0–1,000 Respondents (estimated).
Total	0–39,500 Respondents (estimated)	0–2,275 Respondents (estimated).

Source: IRS:RAAS:KDA (CDW 5–6–20).

For purposes of the PRA, the Treasury Department and the IRS estimate that there are 0 to 500 respondents of all sizes that are likely to be impacted by the collection of information in § 1.1502–68(c)(4). Only a small number of these filers are likely to be small entities, business entities with gross receipts of $25 million or less pursuant to section 448(c)(1). The Treasury Department and the IRS estimate the number of filers affected by § 1.1502–68(c)(4)(i) to be the following:

Form	Gross receipts of $25 million or less	Gross receipts over $25 million
Form 1120	0–67 Respondents (estimated)	0–433 Respondents (estimated).

Source: IRS:RAAS:KDA (CDW 5–15–2020).

Regardless of the number of small entities potentially affected by these final regulations, the Treasury Department and the IRS have concluded that §§ 1.168(k)–2(c) and 1.1502–68(c)(4) will not have a significant economic impact on a substantial number of small entities. As a result of all changes in these final regulations, the Treasury Department and the IRS estimate that individual taxpayers who have gross receipts of $25 million or less and experience an increase in burden will incur an average increase of 0 to 3 hours, and business taxpayers that have gross receipts of $25 million or less and experience an increase in burden will incur an average increase of 0 to 2 hours (Source: IRS:RAAS (8–28–2019)). Because the elections in §§ 1.168(k)–2(c) and 1.1502–68(c)(4) are one of several changes in these final regulations, the Treasury Department and the IRS expect the average increase in burden to be less for the collections of information in §§ 1.168(k)–2(c) and 1.1502–68(c)(4) than the average increase in burden in the preceding sentence. The Treasury Department and the IRS also note that many taxpayers with gross receipts of $25 million or less may experience a reduction in burden as a result of all changes in these final regulations.

Additionally: (1) Many small businesses are not required to capitalize under section 263(a) the amount paid or incurred for the acquisition of depreciable tangible property that costs $5,000 or less if the business has an applicable financial statement or costs $500 or less if the business does not have an applicable financial statement, pursuant to § 1.263(a)–1(f)(1); (2) many small businesses are no longer required to capitalize under section 263A the costs to construct, build, manufacture, install, improve, raise, or grow depreciable property if their average annual gross receipts are $26,000,000 or less (2020 inflation adjusted amount); and (3) a small business that capitalizes costs of depreciable tangible property may deduct under section 179 up to $1,040,000 (2020 inflation adjusted amount) of the cost of such property placed in service during the taxable year if the total cost of depreciable tangible property placed in service during the taxable year does not exceed $2,590,000 (2020 inflation adjusted amount). Therefore, the Treasury Department and the IRS have determined that a substantial number of small entities will not be subject to these final regulations. Further, §§ 1.168(k)–2(c) and 1.1502–68(c)(4) apply only if the taxpayer chooses to make an election. Finally, no comments regarding the economic impact of these regulations on small entities were received. Accordingly, the Secretary of the Treasury's delegate certifies that these final regulations will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, the proposed rule preceding this final rule was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. These final regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

VI. Congressional Review Act

The Administrator of the Office of Information and Regulatory Affairs of the OMB has determined that this Treasury decision is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*) (CRA). Under section 801(3) of the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. Accordingly, the Treasury Department and IRS are adopting these final regulations with the delayed effective date generally prescribed under the Congressional Review Act.

Drafting Information

The principal authors of these final regulations are Kathleen Reed and Elizabeth R. Binder of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for § 1.1502–68 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.1502–68 also issued under 26 U.S.C. 1502.

* * * * *

■ **Par. 2.** Section 1.168(b)–1 is amended by:

■ 1. Revising paragraph (a)(5)(i)(A);

■ 2. In paragraph (b)(2)(i), removing ''paragraphs (b)(2)(ii) and (iii)'' and adding ''paragraphs (b)(2)(ii) through (iv)'' in its place; and

■ 3. Adding paragraph (b)(2)(iv).

The addition and revision read as follows:

§ 1.168(b)–1 Definitions.

(a) * * *

(5) * * *

(i) * * *

(A) For purposes of section 168(e)(6), the improvement is made by the taxpayer and is placed in service by the taxpayer after December 31, 2017;

* * * * *

(b) * * *

(2) * * *

(iv) *Addition of language in paragraph (a)(5)(i)(A) of this section.* The language ''is made by the taxpayer and'' in paragraph (a)(5)(i)(A) of this section applies to property placed in service by the taxpayer after December 31, 2017.

■ **Par. 3.** Section 1.168(k)–0 is amended under § 1.168(k)–2 by:

■ 1. Adding entries for (b)(3)(iii)(C), (b)(3)(v), (b)(5)(iii)(G), (b)(5)(v), (c), (c)(1) and (2), (c)(2)(i) through (iv), (c)(3), (c)(3)(i) through (iii), (c)(4), (c)(4)(i) and (ii), (c)(5), (c)(5)(i) and (ii), (c)(6), (c)(6)(i) and (ii), (c)(7), (c)(7)(i) and (ii), and (c)(8) and (c)(9);

■ 2. Revising the entry for (d)(3)(iv);

■ 3. Adding entries for (d)(4), (f)(7), and (g)(11);

■ 4. Revising the entries for (h)(2) and (3); and

■ 5. Adding entries for (h)(3)(i) through (iii).

The additions and revisions read as follows:

§ 1.168(k)–0 Table of contents.

* * * * *

§ 1.168(k)–2 Additional first year depreciation deduction for property acquired and placed in service after September 27, 2017.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(C) Special rules for a series of related transactions.

* * * * *

(v) Application to members of a consolidated group.

* * * * *

(5) * * *

(iii) * * *

(G) Acquisition of a trade or business or an entity.

* * * * *

(v) Determination of acquisition date for property not acquired pursuant to a written binding contract.

* * * * *

(c) Election for components of larger self-constructed property for which the manufacture, construction, or production begins before September 28, 2017.

(1) In general.

(2) Eligible larger self-constructed property.

(i) In general.

(ii) Residential rental property or nonresidential real property.

(iii) Beginning of manufacture, construction, or production.

(iv) Exception.

(3) Eligible components.

(i) In general.

(ii) Acquired components.

(iii) Self-constructed components.

(4) Special rules.

(i) Installation costs.

(ii) Property described in section 168(k)(2)(B).

(5) Computation of additional first year depreciation deduction.

(i) Election is made.

(ii) Election is not made.

(6) Time and manner for making election.

(i) Time for making election.

(ii) Manner of making election.

(7) Revocation of election.

(i) In general.

(ii) Automatic 6-month extension.

(8) Additional procedural guidance.

(9) Examples.

(d) * * *

(3) * * *

(iv) Determination of acquisition date for property not acquired pursuant to a written binding contract.

(4) Examples.

* * * * *

(f) * * *

(7) Additional procedural guidance.

(g) * * *

(11) Mid-quarter convention.

(h) * * *

(2) Applicability of this section for prior taxable years.

(3) Early application of this section and § 1.1502–68.

(i) In general.

(ii) Early application to certain transactions.

(iii) Bound by early application.

■ **Par. 4.** Section 1.168(k)–2 is amended by:

■ 1. At the end of paragraph (a)(1), removing the period and adding '', except as provided in paragraph (c) of this section.'' in its place;

■ 2. In paragraph (a)(2)(iv)(B), removing ''an asset'' and adding ''the asset'' in its place;

■ 3. After the semicolon at the end of paragraph (a)(2)(iv)(C), adding the word ''or'';

■ 4. In paragraph (a)(2)(iv)(D), removing ''; or'' and adding a period in its place;

■ 5. Removing paragraph (a)(2)(iv)(E);

■ 6. Revising paragraphs (b)(2)(ii)(F) and (G);

■ 7. Adding paragraphs (b)(2)(iii)(F) through (I);

■ 8. Revising the second and third sentences in paragraph (b)(3)(iii)(B)(*1*);

■ 9. Adding paragraphs (b)(3)(iii)(B)(*4*), (b)(3)(iii)(C), (b)(3)(v), and (b)(3)(vii)(Y) through (OO);

■ 10. Revising the last sentence in paragraph (b)(5)(ii)(A);

■ 11. In the first sentence in paragraph (b)(5)(iii)(A), removing the word ''A'' at the beginning of the sentence and adding ''Except as provided in paragraph (b)(5)(iii)(G) of this section, a'' in its place;

■ 12. In the first sentence in paragraph (b)(5)(iii)(B), removing the word ''A'' at the beginning of the sentence and adding ''Except as provided in paragraph (b)(5)(iii)(G) of this section, a'' in its place;

■ 13. Adding paragraph (b)(5)(iii)(G);

■ 14. In the fourth sentence in paragraph (b)(5)(iv)(C)(*1*), removing the period at the end of the sentence and adding '', except as provided in paragraph (c) of this section.'' in its place;

■ 15. In the fourth sentence in paragraph (b)(5)(iv)(C)(*2*), removing the period at the end of the sentence and adding '', except as provided in paragraph (c) of this section.'' in its place;

■ 16. Adding paragraph (b)(5)(v);

■ 17. Revising the second sentence in paragraph (b)(5)(viii) introductory text;

■ 18. Adding paragraph (c);

■ 19. Redesignating paragraph (d)(3)(iv) as paragraph (d)(4) and adding new paragraph (d)(3)(iv);

■ 20. Adding three sentences at the end of paragraph (e)(1)(iii);

■ 21. In paragraph (f)(1)(ii)(D), removing ''(a)(5)(ii),'' and adding ''(a)(5)(ii) (acquired by the taxpayer after September 27, 2017, and placed in service by the taxpayer after September 27, 2017, and before January 1, 2018),'' in its place;

■ 22. In paragraph (f)(1)(ii)(G), removing the word ''A'' at the beginning of the sentence and adding the word ''Each'' in its place;

■ 23. Adding paragraph (f)(7);

■ 24. In paragraph (g)(1)(i):

■ i. In the first sentence, after ''paragraphs (g)(1)(ii) and (iii) of this section'' adding ''and by the application of paragraph (b)(3)(iii)(B)(*4*) of this section''; and

■ ii. In the last sentence, removing the period at the end of the sentence and adding '', except as otherwise provided by the application of paragraph (b)(3)(iii)(B) of this section.'' in its place;

■ 25. Adding paragraph (g)(11); and

■ 26. Revising paragraphs (h)(1), (2), and (3).

The additions and revisions read as follows:

§ 1.168(k)–2 Additional first year depreciation deduction for property acquired and placed in service after September 27, 2017.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(F) Primarily used in a trade or business described in section 163(j)(7)(A)(iv) and §§ 1.163(j)–1(b)(15)(i) and 1.163(j)–10(c)(3)(iii)(C)(*3*), and placed in service by the taxpayer in any taxable year beginning after December 31, 2017. For purposes of section 168(k)(9)(A) and this paragraph (b)(2)(ii)(F), the term *primarily used* has the same meaning as that term is used in § 1.167(a)–11(b)(4)(iii)(*b*) and (e)(3)(iii) for classifying property. This paragraph (b)(2)(ii)(F) does not apply to property that is leased to a lessee's trade or business described in section 163(j)(7)(A)(iv) and §§ 1.163(j)–1(b)(15)(i) and 1.163(j)–10(c)(3)(iii)(C)(*3*), by a lessor's trade or business that is not described in section 163(j)(7)(A)(iv) and §§ 1.163(j)–1(b)(15)(i) and 1.163(j)–10(c)(3)(iii)(C)(*3*) for the taxable year; or

(G) Used in a trade or business that has had floor plan financing indebtedness, as defined in section 163(j)(9)(B) and § 1.163(j)–1(b)(18), if the floor plan financing interest expense, as defined in section 163(j)(9)(A) and § 1.163(j)–1(b)(19), related to such indebtedness is taken into account under section 163(j)(1)(C) for the taxable year. Such property also must be placed in service by the taxpayer in any taxable year beginning after December 31, 2017. Solely for purposes of section 168(k)(9)(B) and this paragraph (b)(2)(ii)(G), floor plan financing interest expense is taken into account for the taxable year by a trade or business that has had floor plan financing indebtedness only if the business interest expense, as defined in section 163(j)(5) and § 1.163(j)–1(b)(3), of the trade or business for the taxable year (which includes floor plan financing interest expense) exceeds the sum of the amounts calculated under section 163(j)(1)(A) and (B) for the trade or business for the taxable year. If the trade or business has taken floor plan financing interest expense into account pursuant to this paragraph (b)(2)(ii)(G) for a taxable year, this paragraph (b)(2)(ii)(G) applies to any property placed in service by that trade or business in that taxable year. This paragraph (b)(2)(ii)(G) does not apply to property that is leased to a lessee's trade or business that has had floor plan financing indebtedness, by a lessor's trade or business that has not had floor plan financing indebtedness during the taxable year or that has had floor plan financing indebtedness but did not take into account floor plan financing interest expense for the taxable year pursuant to this paragraph (b)(2)(ii)(G).

(iii) * * *

(F) *Example 6.* In 2019, a financial institution buys new equipment for $1 million and then leases this equipment to a lessee that primarily uses the equipment in a trade or business described in section 163(j)(7)(A)(iv) and §§ 1.163(j)–1(b)(15)(i) and 1.163(j)–10(c)(3)(iii)(C)(*3*). The financial institution is not described in section 163(j)(7)(A)(iv) and §§ 1.163(j)–1(b)(15)(i) and § 1.163(j)–10(c)(3)(iii)(C)(*3*). As a result, paragraph (b)(2)(ii)(F) of this section does not apply to this new equipment. Assuming all other requirements are met, the financial institution's purchase price of $1 million for the new equipment qualifies for the additional first year depreciation deduction under this section.

(G) *Example 7.* During its taxable year beginning in 2020, *F,* a corporation that is an automobile dealer, buys new computers for $50,000 for use in its trade or business of selling automobiles. For purposes of section 163(j), *F* has the following for 2020: $700 of adjusted taxable income, $40 of business interest income, $400 of business interest expense (which includes $100 of floor plan financing interest expense). The sum of the amounts calculated under section 163(j)(1)(A) and (B) for *F* for 2020 is $390 ($40 + ($700 × 50 percent)). *F*'s business interest expense, which includes floor plan financing interest expense, for 2020 is $400. As a result, *F*'s floor plan financing interest expense is taken into account by *F* for 2020 pursuant to paragraph (b)(2)(ii)(G) of this section. Accordingly, *F*'s purchase price of $50,000 for the computers does not qualify for the additional first year depreciation deduction under this section.

(H) *Example 8.* The facts are the same as in *Example 7* in paragraph (b)(2)(iii)(G) of this section, except *F* buys new computers for $30,000 for use in its trade or business of selling automobiles and, for purposes of section 163(j), *F* has $1,300 of adjusted taxable income. The sum of the amounts calculated under section 163(j)(1)(A) and (B) for *F* for 2020 is $690 ($40 + ($1,300 × 50 percent)). *F*'s business interest expense, which includes floor plan financing interest expense, for 2020 is $400. As a result, *F*'s floor plan financing interest expense is not taken into account by *F* for 2020 pursuant to paragraph (b)(2)(ii)(G) of this section. Assuming all other requirements are met, *F*'s purchase price of $30,000 for the computers qualifies for the additional first year depreciation deduction under this section.

(I) *Example 9.* (*1*) *G,* a calendar-year taxpayer, owns an office building for use in its trade or business and *G* placed in service such building in 2000. In November 2018, *G* made and placed in service an improvement to the inside of such building at a cost of $100,000. In January 2019, *G* entered into a written contract with *H* for *H* to construct an improvement to the inside of the building. In March 2019, *H* completed construction of the improvement at a cost of $750,000 and *G* placed in service such improvement. Both improvements to the building are section 1250 property and are not described in § 1.168(b)–1(a)(5)(ii).

(*2*) Both the improvement to the office building made by *G* in November 2018 and the improvement to the office building that was constructed by *H* for *G* in 2019 are improvements made by *G* under § 1.168(b)–1(a)(5)(i)(A). Further, each improvement is made to the inside of the office building, is section 1250 property, and is not described in § 1.168(b)–1(a)(5)(ii). As a result, each improvement meets the definition of qualified improvement property in section 168(e)(6) and § 1.168(b)–1(a)(5)(i)(A) and (a)(5)(ii). Accordingly, each improvement is 15-year property under section 168(e)(3) and is described in § 1.168(k)–2(b)(2)(i)(A). Assuming all other requirements of this section are met, each improvement made by *G* qualifies for the additional first year depreciation deduction for *G* under this section.

(3) * * *

(iii) * * *

(B) * * *

(*1*) * * * To determine if the taxpayer or a predecessor had a depreciable interest in the property at any time prior to the acquisition, only the five calendar years immediately prior to the current calendar year in which the property is placed in service by the taxpayer, and the portion of such current calendar year before the placed-in-service date of the property without taking into account the applicable convention, are taken into account (lookback period). If either the taxpayer or a predecessor, or both, have not been in existence for the entire lookback period, only the portion of the lookback period during which the taxpayer or a predecessor, or both, as applicable, have been in existence is taken into account to determine if the taxpayer or a predecessor had a depreciable interest in the property at any time prior to the acquisition. * * *

(*4*) *De minimis use of property.* If a taxpayer acquires and places in service property, the taxpayer or a predecessor did not previously have a depreciable interest in the property, the taxpayer disposes of the property to an unrelated party within 90 calendar days after the date the property was originally placed in service by the taxpayer, without taking into account the applicable convention, and the taxpayer reacquires and again places in service the property, then the taxpayer's depreciable interest in the property during that 90-day period is not taken into account for determining whether the property was used by the taxpayer or a predecessor at any time prior to its reacquisition by the taxpayer under paragraphs (b)(3)(iii)(A)(*1*) and (b)(3)(iii)(B)(*1*) of this section. If the taxpayer originally acquired the property before September 28, 2017, as determined under § 1.168(k)–1(b)(4), and the taxpayer reacquires and again places in service the property during the same taxable year the taxpayer disposed of the property to the unrelated party, then this paragraph (b)(3)(iii)(B)(*4*) does not apply. For purposes of this paragraph (b)(3)(iii)(B)(*4*), an *unrelated party* is a person not described in section 179(d)(2)(A) or (B), and § 1.179–4(c)(1)(ii) or (iii) or (c)(2).

(C) *Special rules for a series of related transactions*—(*1*) *In general.* Solely for purposes of paragraph (b)(3)(iii) of this section, each transferee in a series of related transactions tests its relationship under section 179(d)(2)(A) or (B) with the transferor from which the transferee directly acquires the depreciable property (immediate transferor) and with the original transferor of the depreciable property in the series. The transferee is treated as related to the immediate transferor or the original transferor if the relationship exists either when the transferee acquires, or immediately before the first transfer of, the depreciable property in the series. A series of related transactions may include, for example, a transfer of partnership assets followed by a transfer of an interest in the partnership that owned the assets; or a disposition of property and a disposition, directly or indirectly, of the transferor or transferee of the property. For special rules that may apply when the transferor and transferee of the property are members of a consolidated group, as defined in § 1.1502–1(h), see § 1.1502–68.

(*2*) *Special rules*—(*i*) *Property placed in service and disposed of in same taxable year or property not placed in service.* Any party in a series of related transactions that is neither the original transferor nor the ultimate transferee is disregarded (disregarded party) for purposes of testing the relationships under paragraph (b)(3)(iii)(C)(*1*) of this section if the party places in service and disposes of the depreciable property subject to the series, other than in a transaction described in paragraph (g)(1)(iii) of this section, during the party's same taxable year, or if the party does not place in service the depreciable property subject to the series for use in the party's trade or business or production of income. In either case, the party to which the disregarded party disposed of the depreciable property tests its relationship with the party from which the disregarded party acquired the depreciable property and with the original transferor of the depreciable property in the series. If the series has consecutive disregarded parties, the party to which the last disregarded party disposed of the depreciable property tests its relationship with the party from which the first disregarded party acquired the depreciable property and with the original transferor of the depreciable property in the series. The rules for testing the relationships in paragraph (b)(3)(iii)(C)(*1*) of this section continue to apply for the other transactions in the series.

(*ii*) *All section 168(i)(7) transactions.* This paragraph (b)(3)(iii)(C) does not apply if all transactions in a series of related transactions are described in paragraph (g)(1)(iii) of this section (section 168(i)(7) transactions in which property is transferred in the same taxable year that the property is placed in service by the transferor).

(*iii*) *One or more section 168(i)(7) transactions.* Any step in a series of related transactions that is neither the original step nor the ultimate step is disregarded (disregarded step) for purposes of testing the relationships under paragraph (b)(3)(iii)(C)(*1*) of this section if the step is a transaction described in paragraph (g)(1)(iii) of this section. In this case, the relationship is not tested between the transferor and transferee of that transaction. Instead, the relationship is tested between the transferor in the disregarded step and the party to which the transferee in the disregarded step disposed of the depreciable property, the transferee in the disregarded step and the party to which the transferee in the disregarded step disposed of the depreciable property, and the original transferor of the depreciable property in the series and the party to which the transferee in the disregarded step disposed of the depreciable property. If the series has consecutive disregarded steps, the relationship is tested between the transferor in the first disregarded step and the party to which the transferee in the last disregarded step disposed of the depreciable property, the transferee in the last disregarded step and the party to which the transferee in the last disregarded step disposed of the depreciable property, and the original transferor of the depreciable property in the series and the party to which the transferee in the last disregarded step disposed of the depreciable property. The rules for testing the relationships in paragraph (b)(3)(iii)(C)(*1*) of this section continue to apply for the other transactions in the series.

(*iv*) *Syndication transaction.* This paragraph (b)(3)(iii)(C) does not apply to a syndication transaction described in paragraph (b)(3)(vi) of this section.

(*v*) *Certain relationships disregarded.* If a party acquires depreciable property in a series of related transactions in which the party acquires stock, meeting the requirements of section 1504(a)(2), of a corporation in a fully taxable transaction followed by a liquidation of the acquired corporation under section 331, any relationship created as part of such series of related transactions is disregarded in determining whether any party is related to such acquired corporation for purposes of testing the relationships under paragraph (b)(3)(iii)(C)(*1*) of this section.

(*vi*) *Transferors that cease to exist for Federal tax purposes.* Any transferor in a series of related transactions that ceases to exist for Federal tax purposes during the series is deemed, for purposes of testing the relationships under paragraph (b)(3)(iii)(C)(*1*) of this section, to be in existence at the time of any transfer in the series.

(*vii*) *Newly created party.* If a transferee in a series of related transactions acquires depreciable property from a transferor that was not in existence immediately prior to the first transfer of such property in such series (new transferor), the transferee tests its relationship with the party from which the new transferor acquired such property and with the original transferor of the depreciable property in the series for purposes of paragraph (b)(3)(iii)(C)(*1*) of this section. If the series has consecutive new transferors, the party to which the last new transferor disposed of the depreciable property tests its relationship with the party from which the first new transferor acquired the depreciable property and with the original transferor of the depreciable property in the series. The rules for testing the relationships in paragraph (b)(3)(iii)(C)(*1*) of this section continue to apply for the other transactions in the series.

(*viii*) *Application of paragraph (g)(1) of this section.* Paragraph (g)(1) of this section applies to each step in a series of related transactions.

* * * * *

(v) *Application to members of a consolidated group.* For rules applicable to the acquisition of depreciable property by a member of a consolidated group, see § 1.1502–68.

* * * * *

(vii) * * *

(Y) *Example 25.* (*1*) *JL* is a fiscal year taxpayer with a taxable year ending June 30. On April 22, 2020, *JL* acquires and places in service a new machine for use in its trade or business. On May 1, 2022, *JL* sells this machine to *JM,* an unrelated party, for use in *JM*'s trade or business. *JM* is a fiscal year taxpayer with a taxable year ending March 31. On February 1, 2023, *JL* buys the machine from *JM* and places the machine in service. *JL* uses the machine in its trade or business for the remainder of its taxable year ending June 30, 2023.

(*2*) *JL*'s acquisition of the machine on April 22, 2020, satisfies the original use requirement in paragraph (b)(3)(ii) of this section. Assuming all other requirements are met, *JL*'s purchase price of the machine qualifies for the additional first year depreciation deduction for *JL* for the taxable year ending June 30, 2020, under this section.

(*3*) *JM* placed in service the machine on May 1, 2022, and disposed of it on February 1, 2023. As a result, *JM* placed in service and disposed of the machine during the same taxable year (*JM*'s taxable year beginning April 1, 2022, and ending March 31, 2023). Accordingly, *JM*'s acquisition of the machine on May 1, 2022, does not qualify for the additional first year depreciation deduction pursuant to paragraph (g)(1)(i) of this section.

(*4*) Pursuant to paragraph (b)(3)(iii)(B)(*1*) of this section, the lookback period is calendar years 2018 through 2022 and January 1, 2023, through January 31, 2023, to determine if *JL* had a depreciable interest in the machine when *JL* reacquired it on February 1, 2023. As a result, *JL*'s depreciable interest in the machine during the period April 22, 2020, to April 30, 2022, is taken into account for determining whether the machine was used by *JL* or a predecessor at any time prior to its reacquisition by *JL* on February 1, 2023. Accordingly, the reacquisition of the machine by *JL* on February 1, 2023, does not qualify for the additional first year depreciation deduction.

(Z) *Example 26.* (*1*) *EF* has owned and had a depreciable interest in Property since 2012. On January 1, 2016, *EF* contributes assets (not including Property) to existing *Partnership T* in a transaction described in section 721, in exchange for a partnership interest in *Partnership T,* and *Partnership T* placed in service these assets for use in its trade or business. On July 1, 2016, *EF* sells Property to *EG,* a party unrelated to either *EF* or *Partnership T.* On April 1, 2018, *Partnership T* buys Property from *EG* and places it in service for use in its trade or business.

(*2*) *EF* is not *Partnership T*'s predecessor with respect to Property within the meaning of paragraph (a)(2)(iv)(B) of this section. Pursuant to paragraph (b)(3)(iii)(B)(*1*) of this section, the lookback period is 2013–2017, plus January through March 2018, to determine if *Partnership T* had a depreciable interest in Property that *Partnership T* acquired on April 1, 2018. *EF* need not be examined in the lookback period to see if *EF* had a depreciable interest in Property, because *EF* is not *Partnership T*'s predecessor. Because *Partnership T* did not have a depreciable interest in Property in the lookback period prior to its acquisition of Property on April 1, 2018, *Partnership T*'s acquisition of Property on April 1, 2018, satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(B)(*1*) of this section. Assuming all other requirements of this section are satisfied, *Partnership T*'s purchase price of Property qualifies for the additional first year depreciation deduction under this section.

(AA) *Example 27.* (*1*) The facts are the same as in *Example 26* of paragraph (b)(3)(vii)(Z)(*1*) of this section, except that on January 1, 2016, *EF*'s contribution of assets to *Partnership T* includes Property. On July 1, 2016, *Partnership T* sells Property to *EG.*

(*2*) *Partnership T*'s acquisition of Property on January 1, 2016, does not satisfy the original use requirement of § 1.168(k)–1(b)(3) and is not eligible for the additional first year depreciation deduction under section 168(k) as in effect prior to the enactment of the Act.

(*3*) With respect to *Partnership T*'s acquisition of Property on April 1, 2018, *EF* is *Partnership T*'s predecessor with respect to Property within the meaning of paragraph (a)(2)(iv)(B) of this section. Pursuant to paragraph (b)(3)(iii)(B)(*1*) of this section, the lookback period is 2013–2017, plus January through March 2018, to determine if *EF* or *Partnership T* had a depreciable interest in Property that *Partnership T* acquired on April 1, 2018. Because *EF* had a depreciable interest in Property from 2013 to 2015 and *Partnership T* had a depreciable interest in Property from January through June 2016, *Partnership T*'s acquisition of Property on April 1, 2018, does not satisfy the used property acquisition requirement of paragraph (b)(3)(iii)(B)(*1*) of this section and is not eligible for the additional first year depreciation deduction.

(BB) *Example 28.* (*1*) X Corporation has owned and had a depreciable interest in Property since 2012. On January 1, 2015, X Corporation sold Property to *Q,* an unrelated party. Y Corporation is formed July 1, 2015. On January 1, 2016, Y Corporation merges into X Corporation in a transaction described in section 368(a)(1)(A). On April 1, 2018, X Corporation buys Property from *Q* and places it in service for use in its trade or business.

(*2*) Pursuant to paragraph (a)(2)(iv)(A) of this section, Y Corporation is X Corporation's predecessor. Pursuant to paragraph (b)(3)(iii)(B)(*1*) of this section, the lookback period is 2013–2017, plus January through March 2018, to determine if Y Corporation or X Corporation had a depreciable interest in Property that X Corporation acquired on April 1, 2018. Y Corporation did not have a depreciable interest in Property at any time during the lookback period. Because X Corporation had a depreciable interest in Property from 2013 through 2014, X Corporation's acquisition of Property on April 1, 2018, does not satisfy the used property acquisition requirement of paragraph (b)(3)(iii)(B)(*1*) of this section and is not eligible for the additional first year depreciation deduction.

(CC) *Example 29.* (*1*) Y Corporation has owned and had a depreciable interest in Property since 2012. On January 1, 2015, Y Corporation sells Property to *Q,* an unrelated party. X Corporation is formed on July 1, 2015. On January 1, 2016, Y Corporation merges into X Corporation in a transaction described in section 368(a)(1)(A). On April 1, 2018, X Corporation buys Property from *Q* and places it in service for use in its trade or business.

(*2*) Pursuant to paragraph (a)(2)(iv)(A) of this section, Y Corporation is X Corporation's predecessor. Pursuant to paragraph (b)(3)(iii)(B)(*1*) of this section, the lookback period is 2013–2017, plus January through March 2018, to determine if X Corporation or Y Corporation had a depreciable interest in Property that X Corporation acquired on April 1, 2018. Because Y Corporation had a depreciable interest in Property from 2013 through 2014, X Corporation's acquisition of Property on April 1, 2018, does not satisfy the used property acquisition requirement of paragraph (b)(3)(iii)(B)(*1*) of this section and is not eligible for the additional first year depreciation deduction.

(DD) *Example 30.* (*1*) On September 5, 2017, *Y,* a calendar-year taxpayer, acquires and places in service a new machine (Machine #1), and begins using Machine #1 in its manufacturing trade or business. On November 1, 2017, *Y* sells Machine #1 to *Z,* then *Z* leases Machine #1 back to *Y* for 4 years, and *Y* continues to use Machine #1 in its manufacturing trade or business. The lease agreement contains a purchase option provision allowing *Y* to buy Machine #1 at the end of the lease term. On November 1, 2021, *Y* exercises the purchase option in the lease agreement and buys Machine #1 from *Z.* The lease between *Y* and *Z* for Machine #1 is a true lease for Federal tax purposes.

(*2*) Because *Y,* a calendar-year taxpayer, placed in service and disposed of Machine #1 during 2017, Machine #1 is not eligible for the additional first year depreciation deduction for *Y* pursuant to § 1.168(k)–1(f)(1)(i).

(*3*) The use of Machine #1 by *Y* prevents *Z* from satisfying the original use requirement of paragraph (b)(3)(ii) of this section. However, *Z*'s acquisition of Machine #1 satisfies the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Assuming all other requirements are met, *Z*'s purchase price of Machine #1 qualifies for the additional first year depreciation deduction for *Z* under this section.

(*4*) During 2017, *Y* sold Machine #1 within 90 calendar days of placing Machine #1 in service originally on September 5, 2017. Pursuant to paragraph (b)(3)(iii)(B)(*4*) of this section, *Y*'s depreciable interest in Machine #1 during that 90-day period is not taken into account for determining whether Machine #1 was used by *Y* or a predecessor at any time prior to its reacquisition by *Y* on November 1, 2021. Accordingly, assuming all other requirements are met, *Y*'s purchase price of Machine #1 on November 1, 2021, qualifies for the additional first year depreciation deduction for *Y* under this section.

(EE) *Example 31.* (*1*) On October 15, 2019, *FA,* a calendar-year taxpayer, buys and places in service a new machine for use in its trade or business. On January 10, 2020, *FA* sells this machine to *FB* for use in *FB*'s trade or business. *FB* is a calendar-year taxpayer and is not related to *FA.* On March 30, 2020, *FA* buys the machine from *FB* and places the machine in service. *FA* uses the machine in its trade or business for the remainder of 2020.

(*2*) *FA*'s acquisition of the machine on October 15, 2019, satisfies the original use requirement in paragraph (b)(3)(ii) of this section. Assuming all other requirements are met, *FA*'s purchase price of the machine qualifies for the additional first year depreciation deduction for *FA* for the 2019 taxable year under this section.

(*3*) Because *FB* placed in service the machine on January 10, 2020, and disposed of it on March 30, 2020, *FB*'s acquisition of the machine on January 10, 2020, does not qualify for the additional first year depreciation deduction pursuant to § 1.168(k)–2(g)(1)(i).

(*4*) *FA* sold the machine to *FB* in 2020 and within 90 calendar days of placing the machine in service originally on October 15, 2019. Pursuant to paragraph (b)(3)(iii)(B)(*4*) of this section, *FA*'s depreciable interest in the machine during that 90-day period is not taken into account for determining whether the machine was used by *FA* or a predecessor at any time prior to its reacquisition by *FA* on March 30, 2020. Accordingly, assuming all other requirements are met, *FA*'s purchase price of the machine on March 30, 2020, qualifies for the additional first year depreciation deduction for *FA* for the 2020 taxable year under this section.

(FF) *Example 32.* (*1*) The facts are the same as in *Example 31* of paragraph (b)(3)(vii)(EE)(*1*) of this section, except that on November 1, 2020, *FB* buys the machine from *FA* and places the machine in service. *FB* uses the machine in its trade or business for the remainder of 2020.

(*2*) Because *FA* placed in service the machine on March 30, 2020, and disposed of it on November 1, 2020, *FA*'s reacquisition of the machine on March 30, 2020, does not qualify for the additional first year depreciation deduction pursuant to paragraph (g)(1)(i) of this section.

(*3*) During 2020, *FB* sold the machine to *FA* within 90 calendar days of placing the machine in service originally on January 10, 2020. After *FB* reacquired the machine on November 1, 2020, *FB* did not dispose of the property during the remainder of 2020. Pursuant to paragraph (b)(3)(iii)(B)(*4*) of this section, *FB*'s depreciable interest in the machine during that 90-day period is not taken into account for determining whether the machine was used by *FB* or a predecessor at any time prior to its reacquisition by *FB* on November 1, 2020. Accordingly, assuming all other requirements are met, *FB*'s purchase price of the machine on November 1, 2020, qualifies for the additional first year depreciation deduction for *FB* under this section.

(GG) *Example 33.* (*1*) The facts are the same as in *Example 32* of paragraph (b)(3)(vii)(FF)(*1*) of this section, except *FB* sells the machine to *FC,* an unrelated party, on December 31, 2020.

(*2*) Because *FB* placed in service the machine on November 1, 2020, and disposed of it on December 31, 2020, *FB*'s reacquisition of the machine on November 1, 2020, does not qualify for the additional first year depreciation deduction pursuant to paragraph (g)(1)(i) of this section.

(*3*) *FC*'s acquisition of the machine on December 31, 2020, satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(*2*) of this section. Accordingly, assuming all other requirements of this section are satisfied, *FC*'s purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(HH) *Example 34.* (*1*) In August 2017, *FD,* a calendar-year taxpayer, entered into a written binding contract with *X* for *X* to manufacture a machine for *FD* for use in its trade or business. Before September 28, 2017, *FD* incurred more than 10 percent of the total cost of the machine. On February 8, 2020, *X* delivered the machine to *FD* and *FD* placed in service the machine. The machine is property described in section 168(k)(2)(B) as in effect on the day before the date of the enactment of the Act. *FD*'s entire unadjusted depreciable basis of the machine is attributable to the machine's manufacture before January 1, 2020. *FD* uses the safe harbor test in § 1.168(k)–1(b)(4)(iii)(B)(*2*) to determine when manufacturing of the machine began. On March 26, 2020, *FD* sells the machine to *FE* for use in *FE*'s trade or business. *FE* is a calendar-year taxpayer and is not related to *FD.* On November 7, 2020, *FD* buys the machine from *FE* and places in service the machine. *FD* uses the machine in its trade or business for the remainder of 2020.

(*2*) Because *FD* incurred more than 10 percent of the cost of the machine before September 28, 2017, and *FD* uses the safe harbor test in § 1.168(k)–1(b)(4)(iii)(B)(*2*) to determine when the manufacturing of the machine began, *FD* acquired the machine before September 28, 2017. If *FD* had not disposed of the machine on March 26, 2020, the cost of the machine would have qualified for the 30-percent additional first year depreciation deduction pursuant to section 168(k)(8), assuming all requirements are met under section 168(k)(2) as in effect on the day before the date of the enactment of the Act. However, because *FD* placed in service the machine on February 8, 2020, and disposed of it on March 26, 2020, FD's acquisition of the machine on February 8, 2020, does not qualify for the additional first year depreciation deduction pursuant to § 1.168(k)–1(f)(1)(i).

(*3*) Because *FE* placed in service the machine on March 26, 2020, and disposed of it on November 7, 2020, *FE*'s acquisition of the machine on March 26, 2020, does not qualify for the additional first year depreciation deduction pursuant to paragraph (g)(1)(i) of this section.

(*4*) During 2020, *FD* sold the machine to *FE* within 90 calendar days of placing the machine in service originally on February 8, 2020. After *FD* reacquired the machine on November 7, 2020, *FD* did not dispose of the machine during the remainder of 2020. *FD* originally acquired this machine before September 28, 2017. As a result, paragraph (b)(3)(iii)(B)(*4*) of this section does not apply. Pursuant to paragraph (b)(3)(iii)(B)(*1*) of this section, the lookback period is 2015 through 2019 and January 1, 2020, through November 6, 2020, to determine if *FD* had a depreciable interest in the machine when *FD* reacquired it on November 7, 2020. As a result, *FD*'s depreciable interest in the machine during the period February 8, 2020, to March 26, 2020, is taken into account for determining whether the machine was used by *FD* or a predecessor at any time prior to its reacquisition by *FD* on November 7, 2020. Accordingly, the reacquisition of the machine by *FD* on November 7, 2020, does not qualify for the additional first year depreciation deduction.

(II) *Example 35.* (*1*) In a series of related transactions, a father sells a machine to an unrelated individual on

December 15, 2019, who sells the machine to the father's daughter on January 2, 2020, for use in the daughter's trade or business. Pursuant to paragraph (b)(3)(iii)(C)(*1*) of this section, a transferee tests its relationship with the transferor from which the transferee directly acquires the depreciable property, and with the original transferor of the depreciable property in the series. The relationship is tested when the transferee acquires, and immediately before the first transfer of, the depreciable property in the series. As a result, the following relationships are tested under section 179(d)(2)(A): The unrelated individual tests its relationship to the father as of December 15, 2019; and the daughter tests her relationship to the unrelated individual as of January 2, 2020, and December 15, 2019, and to the father as of January 2, 2020, and December 15, 2019.

(*2*) Because the individual is not related to the father within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii) as of December 15, 2019, the individual's acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(*2*) of this section. Accordingly, assuming the unrelated individual placed the machine in service for use in its trade or business in 2019 and all other requirements of this section are satisfied, the unrelated individual's purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(*3*) The individual and the daughter are not related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii) as of January 2, 2020, or December 15, 2019. However, the father and his daughter are related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii) as of January 2, 2020, or December 15, 2019. Accordingly, the daughter's acquisition of the machine does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section and is not eligible for the additional first year depreciation deduction.

(JJ) *Example 36.* (*1*) The facts are the same as in *Example 35* of paragraph (b)(3)(vii)(II)(*1*) of this section, except that instead of selling to an unrelated individual, the father sells the machine to his son on December 15, 2019, who sells the machine to his sister (the father's daughter) on January 2, 2020. Pursuant to paragraph (b)(3)(iii)(C)(*1*) of this section, a transferee tests its relationship with the transferor from which the transferee directly acquires the depreciable property, and with the original transferor of the depreciable property in the series. The relationship is tested when the transferee acquires, and immediately before the first transfer of, the depreciable property in the series. As a result, the following relationships are tested under section 179(d)(2)(A): The son tests his relationship to the father as of December 15, 2019; and the daughter tests her relationship to her brother as of January 2, 2020, and December 15, 2019, and to the father as of January 2, 2020, and December 15, 2019.

(*2*) Because the father and his son are related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii) as of December 15, 2019, the son's acquisition of the machine does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section. Accordingly, the son's acquisition of the machine is not eligible for the additional first year depreciation deduction.

(*3*) The son and his sister are not related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii) as of January 2, 2020, or December 15, 2019. However, the father and his daughter are related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii) as of January 2, 2020, or December 15, 2019. Accordingly, the daughter's acquisition of the machine does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section and is not eligible for the additional first year depreciation deduction.

(KK) *Example 37.* (*1*) In June 2018, *BA,* an individual, bought and placed in service a new machine from an unrelated party for use in its trade or business. In a series of related transactions, *BA* sells the machine to *BB* and *BB* places it in service on October 1, 2019, *BB* sells the machine to *BC* and *BC* places it in service on December 1, 2019, and *BC* sells the machine to *BD* and *BD* places it in service on January 2, 2020. *BA* and *BB* are related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii). *BB* and *BC* are related parties within the meaning of section 179(d)(2)(B) and § 1.179–4(c)(1)(iii). *BC* and *BD* are not related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii), or section 179(d)(2)(B) and § 1.179–4(c)(1)(iii). *BA* is not related to *BC* or to *BD* within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii). All parties are calendar-year taxpayers.

(*2*) *BA*'s purchase of the machine in June 2018 satisfies the original use requirement of paragraph (b)(3)(ii) of this section and, assuming all other requirements of this section are met, *BA*'s purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(*3*) Pursuant to paragraph (b)(3)(iii)(C)(*1*) of this section, a transferee tests its relationship with the transferor from which the transferee directly acquires the depreciable property, and with the original transferor of the depreciable property in the series. The relationship is tested when the transferee acquires, and immediately before the first transfer of, the depreciable property in the series. However, because *BB* placed in service and disposed of the machine in the same taxable year, *BB* is disregarded pursuant to paragraph (b)(3)(iii)(C)(*2*)(*i*) of this section. As a result, the following relationships are tested under section 179(d)(2)(A) and (B): *BC* tests its relationship to *BA* as of December 1, 2019, and October 1, 2019; and *BD* tests its relationship to *BC* as of January 2, 2020, and October 1, 2019, and to *BA* as of January 2, 2020, and October 1, 2020.

(*4*) Because *BA* is not related to *BC* within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii) as of December 1, 2019, or October 1, 2019, *BC*'s acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(*2*) of this section. Accordingly, assuming all other requirements of this section are satisfied, *BC*'s purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(*5*) Because *BC* is not related to *BD* and *BA* is not related to *BD* within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii), or section 179(d)(2)(B) and § 1.179–4(c)(1)(iii) as of January 2, 2020, or October 1, 2019, *BD*'s acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(*2*) of this section. Accordingly, assuming all other requirements of this section are satisfied, *BD*'s purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(LL) *Example 38.* (*1*) In June 2018, *CA,* an individual, bought and placed in service a new machine from an unrelated party for use in his trade or business. In a series of related transactions, *CA* sells the machine to *CB* and *CB* places it in service on September 1, 2019, *CB* transfers the machine to *CC* in a transaction described in paragraph (g)(1)(iii) of this section and *CC* places it in service on November 1, 2019, and *CC* sells the machine to *CD* and *CD* places it in service on January 2, 2020. *CA* and *CB* are not related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii). *CB* and *CC* are related parties within the meaning of section 179(d)(2)(B) and § 1.179–4(c)(1)(iii). *CB* and *CD* are related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii), or section 179(d)(2)(B) and § 1.179–4(c)(1)(iii). *CC* and *CD* are not related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii), or section 179(d)(2)(B) and § 1.179–4(c)(1)(iii). *CA* is not related to *CC* or to *CD* within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii). All parties are calendar-year taxpayers.

(*2*) *CA*'s purchase of the machine in June 2018 satisfies the original use requirement of paragraph (b)(3)(ii) of this section and, assuming all other requirements of this section are met, *CA*'s purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(*3*) Pursuant to paragraph (b)(3)(iii)(C)(*1*) of this section, a transferee tests its relationship with the transferor from which the transferee directly acquires the depreciable property, and with the original transferor of the depreciable property in the series. The relationship is tested when the transferee acquires, and immediately before the first transfer of, the depreciable property in the series. However, because *CB* placed in service and transferred the machine in the same taxable year in a transaction described in paragraph (g)(1)(iii) of this section, the section 168(i)(7) transaction between *CB* and *CC* is disregarded pursuant to paragraph (b)(3)(iii)(C)(*2*)(*iii*) of this section. As a result, the following relationships are tested under section 179(d)(2)(A) and (B): *CB* tests its relationship to *CA* as of September 1, 2019; and *CD* tests its relationship to *CB, CC,* and *CA* as of January 2, 2020, and September 1, 2019.

(*4*) Because *CA* is not related to *CB* within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii) as of September 1, 2019, *CB*'s acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(*2*) of this section. Accordingly, assuming all other requirements of this section are satisfied, *CB*'s purchase price of the machine qualifies for the additional first year depreciation deduction under this section. Pursuant to paragraph (g)(1)(iii) of this section, *CB* is allocated 2/12 of its 100-percent additional first year depreciation deduction for the machine, and *CC* is allocated the remaining portion of *CB*'s 100-percent additional first year depreciation deduction for the machine.

(*5*) *CC* is not related to *CD* and *CA* is not related to *CD* within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii), or section 179(d)(2)(B) and § 1.179–4(c)(1)(iii) as of January 2, 2020, or September 1, 2019. However, *CB* and *CD* are related parties within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii), or section 179(d)(2)(B) and § 1.179–4(c)(1)(iii) as of January 2, 2020, or September 1, 2019. Accordingly, *CD*'s acquisition of the machine does not satisfy the used property acquisition requirements of paragraph (b)(3)(iii) of this section and is not eligible for the additional first year depreciation deduction.

(MM) *Example 39.* (*1*) In a series of related transactions, on January 2, 2018, *DA,* a corporation, bought and placed in service a new machine from an unrelated party for use in its trade or business. As part of the same series, *DB* purchases 100 percent of the stock of *DA* on January 2, 2019, and such stock acquisition meets the requirements of section 1504(a)(2). *DB* and *DA* were not related prior to the acquisition within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii) or section 179(d)(2)(B) and § 1.179–4(c)(1)(iii). Immediately after acquiring the *DA* stock, and *DB* liquidates *DA* under section 331. In the liquidating distribution, *DB* receives the machine that was acquired by *DA* on January 2, 2018. As part of the same series, on March 1, 2020, *DB* sells the machine to *DC* and *DC* places it in service. Throughout the series, *DC* is not related to *DB* or *DA* within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii) or section 179(d)(2)(B) and § 1.179–4(c)(1)(iii).

(*2*) *DA*'s purchase of the machine on January 2, 2018, satisfies the original use requirement of paragraph (b)(3)(ii) of this section and, assuming all other requirements of this section are met, *DA*'s purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(*3*) Pursuant to paragraph (b)(3)(iii)(C)(*1*) of this section, a transferee tests its relationship with the transferor from which the transferee directly acquires the depreciable property, and with the original transferor of the depreciable property in the series. The relationship is tested when the transferee acquires, and immediately before the first transfer of, the depreciable property in the series. Although *DA* is no longer in existence as of the date *DC* acquires the machine, pursuant to paragraph (b)(3)(iii)(C)(*2*)(*vi*) of this section, *DA* is deemed to be in existence at the time of each transfer for purposes of testing relationships under paragraph (b)(3)(iii)(C)(*1*). As a result, the following relationships are tested under section 179(d)(2)(A) and (B): *DB* tests its relationship to *DA* as of January 2, 2019, and January 2, 2018; and *DC* tests its relationship to *DB* and *DA* as of March 1, 2020, and January 2, 2018.

(*4*) Because *DB* acquired the machine in a series of related transactions in which *DB* acquired stock, meeting the requirements of section 1504(a)(2), of *DA* followed by a liquidation of *DA* under section 331, the relationship of *DB* and *DA* created thereof is disregarded for purposes of testing the relationship pursuant to paragraph (b)(3)(iii)(C)(*2*)(*v*) of this section. Therefore, *DA* is not related to *DB* within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii) or section 179(d)(2)(B) and § 1.179–4(c)(1)(iii) as of January 2, 2019, or January 2, 2018, and *DB*'s acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(*2*) of this section. Accordingly, assuming all other requirements of this section are satisfied, *DB*'s depreciable basis of the machine as a result of the liquidation of *DA* qualifies for the additional first year depreciation deduction under this section.

(*5*) Because *DC* is not related to *DB* or *DA* within the meaning of section 179(d)(2)(A) and § 1.179–4(c)(1)(ii) or section 179(d)(2)(B) and § 1.179–4(c)(1)(iii) as of March 1, 2020, or January 2, 2018, *DC*'s acquisition of the machine satisfies the used property acquisition requirements of paragraph (b)(3)(iii)(A)(*2*) of this section. Accordingly, assuming all other requirements of this section are satisfied, *DC*'s purchase price of the machine qualifies for the additional first year depreciation deduction.

(NN) *Example 40.* (*1*) Pursuant to a series of related transactions, on January 2, 2018, *EA* bought and placed in service a new machine from an unrelated party for use in its trade or business. As part of the same series, *EA* sells the machine to *EB* and *EB* places it in service on January 2, 2019. As part of the same series, *EB* sells the machine to *EC* and *EC* places it in service on January 2, 2020. Throughout the series, *EA* is not related to *EB* or *EC* within the meaning of section 179(d)(2)(B) and § 1.179–4(c)(1)(iii). *EB* and *EC* were related parties within the meaning of section 179(d)(2)(B) and § 1.179–4(c)(1)(iii) until July 1, 2019, at which time, they ceased to be related.

(*2*) *EA*'s purchase of the machine on January 2, 2018, satisfies the original use requirement of paragraph (b)(3)(ii) of this section and, assuming all other requirements of this section are met, *EA*'s purchase price of the machines qualifies for the additional first year depreciation deduction under this section.

(*3*) Pursuant to paragraph (b)(3)(iii)(C)(*1*) of this section, a transferee tests its relationship with the transferor from which the transferee directly acquires the depreciable property, and with the original transferor of the depreciable property in the series. The relationship is tested when the transferee acquires, and immediately before the first transfer of, the depreciable property in the series. As a result, the following relationships are tested under section 179(d)(2)(A) and (B): *EB* tests its relationship to *EA* as of January 2, 2019, and January 2, 2018; and *EC* tests its relationship to *EA* and *EB* as of January 2, 2020, and January 2, 2018.

(*4*) Because *EA* is not related to *EB* within the meaning of section 179(d)(2)(B) and § 1.179–4(c)(1)(iii) as of January 2, 2019, or January 2, 2018, *EB*'s acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(*2*) of this section. Accordingly, assuming all other requirements of this section are satisfied, *EB*'s purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(*5*) *EC* and *EA* are not related parties within the meaning of section 179(d)(2)(B) and § 1.179–4(c)(1)(iii) as of January 2, 2020, or January 2, 2018. Within the meaning of section 179(d)(2)(B) and § 1.179–4(c)(1)(iii), *EC* is not related to *EB* as of January 2, 2020; however, *EC* is related to *EB* as of January 2, 2018. Accordingly, *EC*'s acquisition of the machine does not satisfy the used property acquisition requirement of paragraph (b)(3)(iii) of this section and is not eligible for the additional first year depreciation deduction.

(OO) *Example 41.* (*1*) The facts are the same as in *Example 40* of paragraph (b)(3)(vii)(NN)(*1*) of this section, except that instead of selling to *EC, EB* sells the machine to *EE,* and *EE* places in service on January 2, 2020, and *EE* sells the machine to *EC* and *EC* places in service on January 2, 2021. *EE* was not in existence until July 2019 and is not related to *EA* or *EB.*

(*2*) *EA*'s purchase of the machine on January 2, 2018, satisfies the original use requirement of paragraph (b)(3)(ii) of this section and, assuming all other requirements of this section are met, *EA*'s purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(*3*) Pursuant to paragraph (b)(3)(iii)(C)(*1*) of this section, a transferee tests its relationship with the transferor from which the transferee directly acquires the depreciable property, and with the original transferor of the depreciable property in the series. The relationship is tested when the transferee acquires, and immediately before the first transfer of, the depreciable property in the series. However, because *EE* was not in existence immediately prior to the first transfer of the depreciable property in the series, *EC* tests its relationship with *EB* and *EA* pursuant to paragraph (b)(3)(iii)(C)(*2*)(*vii*) of this section. As a result, the following relationships are tested under section 179(d)(2)(A) and (B): *EB* tests its relationship to *EA* as of January 2, 2019, and January 2, 2018; *EE* tests its relationship to *EA* and *EB* as of January 2, 2020, and January 2, 2018; and *EC* tests its relationship to *EA* and *EB* as of January 2, 2021, and January 2, 2018.

(*4*) Because *EA* is not related to *EB* within the meaning of section 179(d)(2)(B) and § 1.179–4(c)(1)(iii) as of January 2, 2019, or January 2, 2018, *EB*'s acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(*2*) of this section. Accordingly, assuming all other requirements of this section are satisfied, *EB*'s purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(*5*) Because *EE* is not related to *EA* or *EB* within the meaning of section 179(d)(2)(B) and § 1.179–4(c)(1)(iii) as of January 2, 2020, or January 2, 2018, *EE*'s acquisition of the machine satisfies the used property acquisition requirement of paragraph (b)(3)(iii)(A)(*2*) of this section. Accordingly, assuming all other requirements of this section are satisfied, *EE*'s purchase price of the machine qualifies for the additional first year depreciation deduction under this section.

(*6*) Within the meaning of section 179(d)(2)(B) and § 1.179–4(c)(1)(iii), *EC* is not related to *EA* as of January 2, 2021, or January 2, 2018; however, *EC* is related to *EB* as of January 2, 2018. Accordingly, *EC*'s acquisition of the machine does not satisfy the used property acquisition requirement of paragraph (b)(3)(iii) of this section and is not eligible for the additional first year depreciation deduction.

* * * * *

(5) * * *

(ii) * * *

(A) * * * For determination of acquisition date, see paragraph (b)(5)(ii)(B) of this section for property acquired pursuant to a written binding contract, paragraph (b)(5)(iv) of this section for self-constructed property, and paragraph (b)(5)(v) of this section for property not acquired pursuant to a written binding contract.

* * * * *

(iii) * * *

(G) *Acquisition of a trade or business or an entity.* A contract to acquire all or substantially all of the assets of a trade or business or to acquire an entity (for example, a corporation, a partnership, or a limited liability company) is binding if it is enforceable under State law against the parties to the contract. The presence of a condition outside the control of the parties, including, for example, regulatory agency approval, will not prevent the contract from being a binding contract. Further, the fact that insubstantial terms remain to be negotiated by the parties to the contract, or that customary conditions remain to be satisfied, does not prevent the contract from being a binding contract. This paragraph (b)(5)(iii)(G) also applies to a contract for the sale of the stock of a corporation that is treated as an asset sale as a result of an election under section 338 or under section 336(e) made for a disposition described in § 1.336–2(b)(1).

* * * * *

(v) *Determination of acquisition date for property not acquired pursuant to a written binding contract.* Except as provided in paragraphs (b)(5)(iv), (vi), and (vii) of this section, the acquisition date of property that the taxpayer acquires pursuant to a contract that does not meet the definition of a written binding contract in paragraph (b)(5)(iii) of this section, is the date on which the taxpayer paid, in the case of a cash basis taxpayer, or incurred, in the case of an accrual basis taxpayer, more than 10 percent of the total cost of the property, excluding the cost of any land and preliminary activities such as planning and designing, securing financing, exploring, or researching. The preceding sentence also applies to property that is manufactured, constructed, or produced for the taxpayer by another person under a written contract that does not meet the definition of a binding contract in paragraph (b)(5)(iii) of this section, and that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income. This paragraph (b)(5)(v) does not apply to an acquisition described in paragraph (b)(5)(iii)(G) of this section.

* * * * *

(viii) * * * Unless the facts specifically indicate otherwise, assume that the parties are not related within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c), paragraph (c) of this section does not apply, and the parties do not have predecessors:

* * * * *

(c) *Election for components of larger self-constructed property for which the manufacture, construction, or production begins before September 28, 2017*—(1) *In general.* A taxpayer may elect to treat any acquired or self-constructed component, as described in paragraph (c)(3) of this section, of the larger self-constructed property, as described in paragraph (c)(2) of this section, as being eligible for the additional first year depreciation deduction under this section, assuming all requirements of section 168(k) and this section are met. The taxpayer may make this election for one or more such components.

(2) *Eligible larger self-constructed property*—(i) *In general.* Solely for purposes of this paragraph (c), a larger self-constructed property is property that is manufactured, constructed, or produced by the taxpayer for its own use in its trade or business or production of income. Solely for purposes of this paragraph (c), property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract, as defined in paragraph (b)(5)(iii) of this section, or under a written contract that does not meet the definition of a binding contract in paragraph (b)(5)(iii) of this section, that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or production of income is considered to be manufactured, constructed, or produced by the taxpayer. Except as provided in paragraph (c)(2)(iv) of this section, such larger self-constructed property must be property—

(A) That is described in paragraph (b)(2)(i)(A), (B), (C), or (D) of this section. Solely for purposes of the preceding sentence, the requirement that property has to be acquired after September 27, 2017, is disregarded;

(B) That meets the requirements under paragraph (b) of this section, determined without regard to the acquisition date requirement in paragraph (b)(5) of this section; and

(C) For which the taxpayer begins the manufacture, construction, or production before September 28, 2017.

(ii) *Residential rental property or nonresidential real property.* If the taxpayer constructs, manufactures, or produces residential rental property or nonresidential real property, as defined in section 168(e)(2), or an improvement to such property, for use in its trade or business or production of income, all property that is constructed, manufactured, or produced as part of such residential rental property, nonresidential real property, or improvement, as applicable, and that is described in paragraph (c)(2)(i)(A) of this section is the larger self-constructed property for purposes of applying the rules in this paragraph (c).

(iii) *Beginning of manufacturing, construction, or production.* Solely for purposes of paragraph (c)(2)(i)(C) of this section, the determination of when manufacture, construction, or production of the larger self-constructed property begins is made in accordance with the rules in paragraph (b)(5)(iv)(B) of this section if the larger self-constructed property is manufactured, constructed, or produced by the taxpayer for its own use in its trade or business or production of income, or is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract, as defined in paragraph (b)(5)(iii) of this section, that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or production of income. If the larger self-constructed property is manufactured, constructed, or produced for the taxpayer by another person under a written contract that does not meet the definition of a binding contract in paragraph (b)(5)(iii) of this section, that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or production of income, the determination of when manufacture, construction, or production of the larger self-constructed property begins is made in accordance with the rules in paragraph (b)(5)(v) of this section. If the taxpayer enters into a written binding contract, as defined in paragraph (b)(5)(iii) of this section, before September 28, 2017, with another person to manufacture, construct, or produce the larger self-constructed property and the manufacture, construction, or production of this property begins after September 27, 2017, as determined under paragraph (b)(5)(iv)(B) of this section, this paragraph (c) does not apply. If the taxpayer enters into a written contract that does not meet the definition of a binding contract in paragraph (b)(5)(iii) of this section before September 28, 2017, with another person to manufacture, construct, or produce the larger self-constructed property and the manufacture, construction, or production of this property begins after September 27, 2017, as determined under paragraph (b)(5)(v) of this section, this paragraph (c) does not apply.

(iv) *Exception.* This paragraph (c) does not apply to any larger self-constructed property that is included in a class of property for which the taxpayer made an election under section 168(k)(7) (formerly section 168(k)(2)(D)(iii)) not to deduct the additional first year depreciation deduction.

(3) *Eligible components*—(i) *In general.* Solely for purposes of this paragraph (c), a component of the larger self-constructed property, as described in paragraph (c)(2) of this section, must be qualified property under section 168(k)(2) and paragraph (b) of this section. Solely for purposes of the preceding sentence, a component will satisfy the acquisition date requirement in paragraph (b)(5) of this section if it satisfies the requirements in paragraph (c)(3)(ii) or (iii) of this section, as applicable.

(ii) *Acquired components.* If a component of the larger self-constructed property is acquired pursuant to a written binding contract, as defined in paragraph (b)(5)(iii) of this section, the component must be acquired by the taxpayer after September 27, 2017, as determined under the rules in paragraph (b)(5)(ii)(B) of this section. If a component of the larger self-constructed property is acquired pursuant to a written contract that does not meet the definition of a binding contract in paragraph (b)(5)(iii) of this section, the component must be acquired by the taxpayer after September 27, 2017, as determined under the rules in paragraph (b)(5)(v) of this section.

(iii) *Self-constructed components.* The manufacture, construction, or production of a component of a larger self-constructed property must begin after September 27, 2017. The determination of when manufacture, construction, or production of the component begins is made in accordance with the rules in—

(A) Paragraph (b)(5)(iv)(B) of this section if the component is manufactured, constructed, or produced by the taxpayer for its own use in its trade or business or for its production of income, or is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract, as defined in paragraph (b)(5)(iii) of this section, that is entered into prior to the manufacture, construction, or production of the component for use by the taxpayer in its trade or business or for its production of income; or

(B) Paragraph (b)(5)(v) of this section if the component is manufactured, constructed, or produced for the taxpayer by another person under a written contract that does not meet the definition of a binding contract in paragraph (b)(5)(iii) of this section, that is entered into prior to the manufacture, construction, or production of the component for use by the taxpayer in its trade or business or for its production of income.

(4) *Special rules*—(i) *Installation costs.* If the taxpayer pays, in the case of a cash basis taxpayer, or incurs, in the case of an accrual basis taxpayer, costs, including labor costs, to install a component of the larger self-constructed property, as described in paragraph (c)(2) of this section, such costs are eligible for the additional first year depreciation under this section, assuming all requirements are met, only if the component being installed meets the requirements in paragraph (c)(3) of this section.

(ii) *Property described in section 168(k)(2)(B).* The rules in paragraph (e)(1)(iii) of this section apply for determining the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of larger self-constructed property described in paragraph (c)(2) of this section and in section 168(k)(2)(B).

(5) *Computation of additional first year depreciation deduction*—(i) *Election is made.* Before determining the allowable additional first year depreciation deduction for the larger self-constructed property, as described in paragraph (c)(2) of this section, for which the taxpayer makes the election specified in this paragraph (c) for one or more components of such property, the taxpayer must determine the portion of the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the larger self-constructed property, including all components, attributable to the component that meets the requirements of paragraphs (c)(3) and (c)(4)(i) of this section (component basis). The additional first year depreciation deduction for the component basis is determined by multiplying such component basis by the applicable percentage for the placed-in-service year of the larger self-constructed property. The additional first year depreciation deduction, if any, for the remaining unadjusted depreciable basis of the larger self-constructed property, as described in paragraph (c)(2) of this section, is determined under section 168(k), as in effect on the day before the date of the enactment of the Act, and section 168(k)(8). For purposes of this paragraph (c), the remaining unadjusted depreciable basis of the larger self-constructed property is equal to the unadjusted depreciable basis, as defined in § 1.168(b)–1(a)(3), of the larger self-constructed property, including all components, reduced by the sum of the component basis of the components for which the taxpayer makes the election specified in this paragraph (c).

(ii) *Election is not made.* If the taxpayer does not make the election specified in this paragraph (c), the additional first year depreciation deduction, if any, for the larger self-constructed property, including all components, is determined under section 168(k), as in effect on the day before the date of the enactment of the Act, and section 168(k)(8).

(6) *Time and manner for making election*—(i) *Time for making election.* The election specified in this paragraph (c) must be made by the due date, including extensions, of the Federal tax return for the taxable year in which the taxpayer placed in service the larger self-constructed property.

(ii) *Manner of making election.* The election specified in this paragraph (c) must be made by attaching a statement to such return indicating that the taxpayer is making the election provided in this paragraph (c) and whether the taxpayer is making the election for all or some of the components described in paragraph (c)(3) of this section. The election is made separately by each person owning qualified property (for example, for each member of a consolidated group by the agent for the group (within the meaning of § 1.1502–77(a) and (c)), by the partnership (including a lower-tier partnership), or by the S corporation).

(7) *Revocation of election*—(i) *In general.* Except as provided in paragraph (c)(7)(ii) of this section, the election specified in this paragraph (c), once made, may be revoked only by filing a request for a private letter ruling and obtaining the Commissioner of Internal Revenue's written consent to revoke the election. The Commissioner may grant a request to revoke the election if the taxpayer acted reasonably and in good faith, and the revocation will not prejudice the interests of the Government. See generally § 301.9100–3 of this chapter. The election specified in this paragraph (c) may not be revoked through a request under section 446(e) to change the taxpayer's method of accounting.

(ii) *Automatic 6-month extension.* If a taxpayer made the election specified in this paragraph (c), an automatic extension of 6 months from the due date of the taxpayer's Federal tax return, excluding extensions, for the placed-in-service year of the larger self-constructed property is granted to revoke that election, provided the taxpayer timely filed the taxpayer's Federal tax return for that placed-in-service year and, within this 6-month extension period, the taxpayer, and all taxpayers whose tax liability would be affected by the election, file an amended Federal tax return for the placed-in-service year in a manner that is consistent with the revocation of the election.

(8) *Additional procedural guidance.* The IRS may publish procedural guidance in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) that provides alternative procedures for complying with paragraph (c)(6) or (c)(7)(i) of this section.

(9) *Examples.* The application of this paragraph (c) is illustrated by the following examples. Unless the facts specifically indicate otherwise, assume that the larger self-constructed property is described in paragraph (c)(2) of this section, the components that are acquired or self-constructed after September 27, 2017, are described in paragraph (c)(3) of this section, the taxpayer is an accrual basis taxpayer, and none of the costs paid or incurred after September 27, 2017, are for the installation of components that do not meet the requirements of paragraph (c)(3) of this section.

(i) *Example 1.* (A) *BC,* a calendar year taxpayer, is engaged in a trade or business described in section 163(j)(7)(A)(iv) and §§ 1.163(j)–1(b)(15)(i) and 1.163(j)–10(c)(3)(iii)(C)(*3*). In December 2015, *BC* decided to construct an electric generation power plant for its own use. This plant is property described in section 168(k)(2)(B) as in effect on the day before the date of the enactment of the Act. However, the turbine for the plant had to be manufactured by another person for *BC.* In January 2016, *BC* entered into a written binding contract with *CD* to acquire the turbine. *BC* received the completed turbine in August 2017 at which time *BC* incurred the cost of the turbine. The cost of the turbine is 11 percent of the total cost of the electric generation power plant to be constructed by *BC. BC* began constructing the electric generation power plant in October 2017 and placed in service this new power plant, including all component parts, in 2020.

(B) The larger self-constructed property is the electric generation power plant to be constructed by *BC.* For determining if the construction of this power plant begins before September 28, 2017, paragraph (b)(5)(iv)(B) of this section provides that manufacture, construction, or production of property begins when physical work of a significant nature begins. *BC* uses the safe harbor test in paragraph (b)(5)(iv)(B)(*2*) of this section to determine when physical work of a significant nature begins for the electric generation power plant. Because the turbine that was manufactured by *CD* for *BC* is more than 10 percent of the total cost of the electric generation power plant, physical work of a significant nature for this plant began before September 28, 2017.

(C) The power plant is described in section 168(k)(9)(A) and paragraph (b)(2)(ii)(F) of this section and, therefore, is not larger self-constructed property eligible for the election pursuant to paragraph (c)(2)(i)(B) of this section. Accordingly, none of *BC's* expenditures for components of the power plant that are acquired or self-constructed after September 27, 2017, are eligible for the election specified in this paragraph (c). Assuming all requirements are met under section 168(k)(2) as in effect on the day before the date of the enactment of the Act, the unadjusted depreciable basis of the power plant, including all components, attributable to its construction before January 1, 2020, is eligible for the 30-percent additional first year depreciation deduction pursuant to section 168(k)(8).

(ii) *Example 2.* (A) In August 2017, *BD,* a calendar-year taxpayer, entered into a written binding contract with *CE* for *CE* to manufacture a locomotive for *BD* for use in its trade or business. Before September 28, 2017, *BD* acquired or self-constructed components of the locomotive. These components cost $500,000, which is more than 10 percent of the total cost of the locomotive, and *BD* incurred such costs before September 28, 2017. After September 27, 2017, *BD* acquired or self-constructed components of the locomotive and these components cost $4,000,000. In February 2019, *CE* delivered the locomotive to *BD* and *BD* placed in service the locomotive. The total cost of the locomotive is $4,500,000. The locomotive is property described in section 168(k)(2)(B) as in effect on the day before the date of the enactment of the Act. On its timely filed Federal income tax return for 2019, *BD* made the election specified in this paragraph (c).

(B) The larger self-constructed property is the locomotive being manufactured by *CE* for *BD.* For determining if the manufacturing of this locomotive begins before September 28, 2017, paragraph (b)(5)(iv)(B) of this section provides that manufacture, construction, or production of property begins when physical work of a significant nature begins. *BD* uses the safe harbor test in paragraph (b)(5)(iv)(B)(*2*) of this section to determine when physical work of a significant nature begins for the locomotive. Because *BD* had incurred more than 10 percent of the total cost of the locomotive before September 28, 2017, physical work of a significant nature for this locomotive began before September 28, 2017.

(C) Because *BD* made the election specified in this paragraph (c), the cost of $4,000,000 for the locomotive's components acquired or self-constructed after September 27, 2017, qualifies for the 100-percent additional first year depreciation deduction under this section, assuming all other requirements are met. The remaining cost of the locomotive is $500,000 and such amount qualifies for the 40-percent additional first year depreciation deduction pursuant to section 168(k)(8), assuming all other requirements in section 168(k) as in effect on the day before the date of the enactment of the Act are met.

(iii) *Example 3.* (A) In February 2016, *BF,* a calendar-year taxpayer, entered into a written binding contract with *CG* for *CG* to manufacture a vessel for *BF* for use in its trade or business. Before September 28, 2017, *BF* acquired or self-constructed components for the vessel. These components cost $30,000,000, which is more than 10 percent of the total cost of the vessel, and *BF* incurred such costs before September 28, 2017. After September 27, 2017, *BF* acquired or self-constructed components for the vessel and these components cost $15,000,000. In February 2021, *CG* delivered the vessel to *BF* and *BF* placed in service the vessel. The vessel is property described in section 168(k)(2)(B) as in effect on the day before the date of the enactment of the Act. The total cost of the vessel is $45,000,000. On its timely filed Federal income tax return for 2021, *BF* made the election specified in this paragraph (c).

(B) The larger self-constructed property is the vessel being manufactured by *CG* for *BF.* For determining if the manufacturing of this vessel begins before September 28, 2017, paragraph (b)(5)(iv)(B) of this section provides that manufacture, construction, or production of property begins when physical work of a significant nature begins. *BF* uses the safe harbor test in paragraph (b)(5)(iv)(B)(*2*) of this section to determine when physical work of a significant nature begins for the vessel. Because *BF* had incurred more than 10 percent of the total cost of the vessel before September 28, 2017, physical work of a significant nature for this vessel began before September 28, 2017.

(C) Because *BF* made the election specified in this paragraph (c), the cost of $15,000,000 for the vessel's components acquired or self-constructed after September 27, 2017, qualifies for the 100-percent additional first year depreciation deduction under this section, assuming all other requirements are met. Pursuant to section 168(k)(8) and because *BF* placed in service the vessel after 2020, none of the remaining cost of the vessel is eligible for any additional first year depreciation deduction under section 168(k) and this section nor under section 168(k) as in effect on the day before the date of the enactment of the Act.

(iv) *Example 4.* (A) In March 2017, *BG,* a calendar year taxpayer, entered into a written contract with *CH* for *CH* to construct a building for *BG* to use in its retail business. This written contract does not meet the definition of a binding contract in paragraph (b)(5)(iii) of this section. In September 2019, the construction of the building was completed and placed in service by *BG.* The total cost is $10,000,000. Of this amount, $3,000,000 is the total cost for all section 1245 properties constructed as part of the building, and $7,000,000 is for the building. Under section 168(e), section 1245 properties in the total amount of $2,400,000 are 5-year property and in the total amount of $600,000 are 7-year property. The building is nonresidential real property under section 168(e). Before September 28, 2017, *BG* acquired or self-constructed certain components and the total cost of these components is $500,000 for the section 1245 properties and $3,000,000 for the building. *BG* incurred these costs before September 28, 2017. After September 27, 2017, *BG* acquired or self-constructed the remaining components of the section 1245 properties and these components cost $2,500,000. *BG* incurred these costs of $2,500,000 after September 27, 2017. On its timely filed Federal income tax return for 2019, *BG* made the election specified in this paragraph (c).

(B) All section 1245 properties are constructed as part of the construction of the building and are described in paragraph (b)(2)(i)(A) of this section. The building is not described in paragraph (b)(2)(i)(A), (B), (C), or (D) of this section. As a result, under paragraph (c)(2)(ii) of this section, the larger self-constructed property is all section 1245 properties with a total cost of $3,000,000. For determining if the construction of these section 1245 properties begins before September 28, 2017, paragraph (b)(5)(v) of this section provides that manufacture, construction, or production of property begins when the taxpayer incurs more than 10 percent of the total cost of the property. Because *BG* incurred more than 10 percent of the total cost of the section 1245 properties before September 28, 2017, construction of the section 1245 properties began before September 28, 2017.

(C) Because *BG* made the election specified in this paragraph (c), the cost of $2,500,000 for the section 1245 components acquired or self-constructed by *BG* after September 27, 2017, qualifies for the 100-percent additional first year depreciation deduction under this section, assuming all other requirements are met. The remaining cost of the section 1245 components is $500,000 and such amount qualifies for the 30-percent additional first year depreciation deduction pursuant to section 168(k)(8), assuming all other requirements in section 168(k), as in effect on the day before the date of the enactment of the Act, are met. Because the building is not qualified property under section 168(k), as in effect on the day before the date of the enactment of the Act, none of the cost of $7,000,000 for the building is eligible for any additional first year depreciation deduction under section 168(k) and this section or under section 168(k), as in effect on the day before the date of the enactment of the Act.

(d) * * *

(3) * * *

(iv) *Determination of acquisition date for property not acquired pursuant to a written binding contract.* For purposes of the acquisition rules in paragraph (d)(1) of this section, the following property is acquired by the taxpayer before January 1, 2027, if the taxpayer paid, in the case of a cash basis taxpayer, or incurred, in the case of an accrual basis taxpayer, more than 10 percent of the total cost of the property before January 1, 2027, excluding the cost of any land and preliminary activities such as planning and designing, securing financing, exploring, or researching:

(A) Property that the taxpayer acquires pursuant to a contract that does not meet the definition of a written binding contract in paragraph (b)(5)(iii) of this section; or

(B) Property that is manufactured, constructed, or produced for the taxpayer by another person under a written contract that does not meet the definition of a binding contract in paragraph (b)(5)(iii) of this section, and that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or production of income.

* * * * *

(e) * * *

(1) * * *

(iii) * * * The amounts of unadjusted depreciable basis attributable to the property's manufacture, construction, or production before January 1, 2027, are referred to as "progress expenditures." Rules similar to the rules in section 4.02(1)(b) of Notice 2007–36 (2007–17 I.R.B. 1000) (see § 601.601(d)(2)(ii)(*b*) of this chapter) apply for determining progress expenditures, regardless of whether the property is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract, as defined in paragraph (b)(5)(iii) of this section, or under a written contract that does not meet the definition of a binding contract in paragraph (b)(5)(iii) of this section. The IRS may publish procedural guidance in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) that provides alternative procedures for complying with this paragraph (e)(1)(iii).

* * * * *

(f) * * *

(7) *Additional procedural guidance.* The IRS may publish procedural guidance in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) that provides alternative procedures for complying with paragraph (f)(1)(iii), (f)(1)(iv), (f)(2)(ii), (f)(2)(iii), (f)(3)(ii), (f)(3)(iii), or (f)(5)(i) of this section.

(g) * * *

(11) *Mid-quarter convention.* In determining whether the mid-quarter convention applies for a taxable year under section 168(d)(3) and § 1.168(d)–1, the depreciable basis, as defined in § 1.168(d)–1(b)(4), for the taxable year the qualified property is placed in service by the taxpayer is not reduced by the allowed or allowable additional first year depreciation deduction for that taxable year. See § 1.168(d)–1(b)(4).

(h) * * *

(1) *In general.* Except as provided in paragraphs (h)(2) and (3) of this section, this section applies to—

(i) Depreciable property acquired after September 27, 2017, by the taxpayer and placed in service by the taxpayer during or after the taxpayer's taxable year that begins on or after January 1, 2021;

(ii) A specified plant for which the taxpayer properly made an election to apply section 168(k)(5) and that is planted, or grafted to a plant that was previously planted, by the taxpayer during or after the taxpayer's taxable year that begins on or after January 1, 2021; and

(iii) Components acquired or self-constructed after September 27, 2017, of larger self-constructed property described in paragraph (c)(2) of this section and placed in service by the taxpayer during or after the taxpayer's taxable year that begins on or after January 1, 2021.

(2) *Applicability of this section for prior taxable years.* For taxable years beginning before January 1, 2021, see § 1.168(k)-2 as contained in 26 CFR part 1, revised as of April 1, 2020.

(3) *Early application of this section and § 1.1502–68*—(i) *In general.* Subject to paragraphs (h)(3)(ii) and (iii) of this section, and provided that all members of a consolidated group consistently apply the same set of rules, a taxpayer may choose to apply both the rules of this section and the rules of § 1.1502–68 (to the extent relevant), in their entirety and in a consistent manner, to—

(A) Depreciable property acquired after September 27, 2017, by the taxpayer and placed in service by the taxpayer during a taxable year ending on or after September 28, 2017;

(B) A specified plant for which the taxpayer properly made an election to apply section 168(k)(5) and that is planted, or grafted to a plant that was previously planted, after September 27, 2017, by the taxpayer during a taxable year ending on or after September 28, 2017; and

(C) Components acquired or self-constructed after September 27, 2017, of larger self-constructed property described in paragraph (c)(2) of this section and placed in service by the taxpayer during a taxable year ending on or after September 28, 2017.

(ii) *Early application to certain transactions.* In the case of property described in § 1.1502–68(e)(2)(i) that is acquired in a transaction that satisfies the requirements of § 1.1502–68(c)(1)(ii) or (c)(2)(ii), the taxpayer may apply the rules of this section and the rules of § 1.1502–68 (to the extent relevant), in their entirety and in a consistent manner, to such property only if those rules are applied, in their entirety and in a consistent manner, by all parties to the transaction, including the transferor member, the transferee member, and the target, as applicable, and the consolidated groups of which they are members, for the taxable year(s) in which the transaction occurs and the taxable year(s) that includes the day after the deconsolidation date, as defined in § 1.1502–68(a)(2)(iii).

(iii) *Bound by early application.* Once a taxpayer applies the rules of this section and the rules of § 1.1502–68 (to the extent relevant), in their entirety, for a taxable year, the taxpayer must continue to apply the rules of this section and the rules of § 1.1502–68 (to the extent relevant), in their entirety, for the taxpayer's subsequent taxable years.

■ **Par. 5.** Section 1.1502–68 is added immediately following § 1.1502–59A to read as follows:

§ 1.1502–68 Additional first year depreciation deduction for property acquired and placed in service after September 27, 2017.

(a) *In general*—(1) *Overview.* This section provides rules governing the availability of the additional first year depreciation deduction allowable under section 168(k) for qualified property that is acquired and placed in service after September 27, 2017, by a member of a consolidated group. Except as otherwise provided in paragraph (c) of this section, the rules in § 1.168(k)–2 apply to members of a consolidated group in addition to the rules in this section. Paragraph (a)(2) of this section provides definitions of terms used in this section. Paragraph (b) of this section provides rules addressing the application of § 1.168(k)–2(b)(3)(iii)(A)(*1*) (requiring that a taxpayer claiming the additional first year depreciation deduction for used property not previously have used the property) to members of a consolidated group. Paragraph (c) of this section provides rules addressing certain transfers of eligible property (as defined in paragraph (a)(2)(vii) of this section) between members of a consolidated group if the transferee member (as defined in paragraph (a)(2)(xii) of this section) leaves the group pursuant to the same series of related transactions. Paragraph (d) of this section provides examples illustrating the application of the rules of this section. Paragraph (e) of this section provides the applicability dates.

(2) *Definitions.* The following definitions apply for purposes of this section.

(i) *Consolidated Asset Acquisition Rule.* The term *Consolidated Asset Acquisition Rule* refers to the rule set forth in paragraph (c)(1)(i) of this section addressing certain intercompany transfers of eligible property.

(ii) *Consolidated Deemed Acquisition Rule.* The term *Consolidated Deemed Acquisition Rule* refers to the rule set forth in paragraph (c)(2)(i) of this section addressing certain intercompany transfers of the stock of target (as defined in paragraph (a)(2)(xi) of this section).

(iii) *Deconsolidation date.* The term *deconsolidation date* means the date on which a transferee member ceases to be a member of a consolidated group.

(iv) *Designated transaction.* The term *designated transaction* has the meaning provided in paragraph (c)(4)(i) of this section.

(v) *Deemed replacement property.* The term *deemed replacement property* means used property that is identical to (but is separate and distinct from) the eligible property that the transferee member or target is deemed to sell to an unrelated party under the Consolidated Asset Acquisition Rule or the Consolidated Deemed Acquisition Rule. For all Federal income tax purposes, the deemed purchase of deemed replacement property by the transferee member or target under paragraph (c)(1)(i)(B) or (c)(2)(i)(B) of this section, respectively, does not result in the basis in such property being determined, in whole or in part, by reference to the basis of other property held at any time by the transferee member or target. See section 179(d)(3) and § 1.168(k)–2(b)(3)(iii)(A)(*3*).

(vi) *Deemed sale amount.* The term *deemed sale amount* means an amount equal to the transferee member's or the target's adjusted basis in the eligible property immediately before the transferee member or target is deemed to sell the property to an unrelated party under the Consolidated Asset Acquisition Rule or the Consolidated Deemed Acquisition Rule.

(vii) *Eligible property.* The term *eligible property* means depreciable property (as defined in § 1.168(b)–1(a)(1)) that meets the requirements in § 1.168(k)–2(b)(2), determined without regard to § 1.168(k)–2(b)(2)(ii)(C) (property subject to an election not to claim the additional first year depreciation for a class of property) except on the day after the deconsolidation date.

(viii) *Group Prior Use Rule.* The term *Group Prior Use Rule* refers to the rule set forth in paragraph (b)(1) of this section addressing when a member of a consolidated group is attributed another member's depreciable interest in property.

(ix) *Lookback Period.* The term *lookback period* means, with respect to a member of a consolidated group, the period that includes the five calendar years immediately prior to the current calendar year in which the property is placed in service by such member, as well as the portion of such current calendar year before the date on which the member placed the property in service (without taking into account the applicable convention).

(x) *Stock and Asset Acquisition Rule.* The term *Stock and Asset Acquisition Rule* refers to the rule set forth in paragraph (b)(2) of this section addressing when a member of a consolidated group is attributed a new member's depreciable interest in property.

(xi) *Target.* The term *target* means the member whose stock is transferred in a transaction that is subject to the Consolidated Deemed Acquisition Rule.

(xii) *Transferee member.* The term *transferee member* means the member that acquires eligible property or target stock, respectively, in a transaction that is subject to the Consolidated Asset Acquisition Rule or the Consolidated Deemed Acquisition Rule.

(xiii) *Transferor member.* The term *transferor member* means the member that transfers eligible property or target stock, respectively, in a transaction that is subject to the Consolidated Asset Acquisition Rule or the Consolidated Deemed Acquisition Rule.

(b) *Acquisitions of depreciable property by a member of a consolidated group*—(1) *General rule (Group Prior Use Rule).* Solely for purposes of applying § 1.168(k)–2(b)(3)(iii)(A)(*1*), if a member of a consolidated group acquires depreciable property in which the group had a depreciable interest at any time within the lookback period, the member is treated as having a depreciable interest in the property prior to the acquisition. For purposes of this paragraph (b)(1), a consolidated group is treated as having a depreciable interest in property during the time any current or previous member of the group had a depreciable interest in the property while a member of the group. For special rules that apply when a member of a consolidated group acquires depreciable property in an intercompany transaction (as defined in § 1.1502–13(b)(1)(i)) and then leaves the group pursuant to the same series of related transactions, see paragraph (c) of this section.

(2) *Certain acquisitions pursuant to a series of related transactions (Stock and Asset Acquisition Rule).* Solely for purposes of applying § 1.168(k)–2(b)(3)(iii)(A)(*1*), if a series of related

transactions includes one or more transactions in which property is acquired by a member of a consolidated group, and one or more transactions in which a corporation that had a depreciable interest in the property (determined without regard to the application of the Group Prior Use Rule) within the lookback period becomes a member of the group, then the member that acquires the property is treated as having a depreciable interest in the property prior to the acquisition.

(c) *Certain intercompany transfers of eligible property followed by deconsolidation*—(1) *Acquisition of eligible property by a member that leaves the group*—(i) *General rule (Consolidated Asset Acquisition Rule).* This paragraph (c)(1) applies to certain transactions pursuant to which one member of a consolidated group (transferee member) acquires from another member of the same consolidated group (transferor member) eligible property. Except as otherwise provided in paragraph (c)(3) or (4) of this section, if a transaction satisfies the requirements of paragraph (c)(1)(ii) of this section, then § 1.168(k)–2(b)(3)(iii)(C) (providing special rules when depreciable property is acquired as part of a series of related transactions) does not apply to the transaction, and for all Federal income tax purposes—

(A) The transferee member is treated as selling the eligible property to an unrelated person on the day after the deconsolidation date in exchange for an amount of cash equal to the deemed sale amount; and

(B) Immediately after the deemed sale in paragraph (c)(1)(i)(A) of this section, the transferee member is treated as purchasing deemed replacement property from an unrelated person for an amount of cash equal to the deemed sale amount.

(ii) *Requirements.* A transaction satisfies the requirements of this paragraph (c)(1)(ii) if—

(A) The transferee member's acquisition of the eligible property meets the requirements of § 1.168(k)–2(b)(3)(iii)(A) without regard to section 179(d)(2)(A) or (B) and § 1.179–4(c)(1)(ii) or (iii) or the Group Prior Use Rule;

(B) As part of the same series of related transactions that includes the acquisition, the transferee member ceases to be a member of the consolidated group and ceases to be related, within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c)(1)(ii) or (iii), to the transferor member; and

(C) The acquired eligible property continues to be eligible property on the deconsolidation date and the day after the deconsolidation date.

(2) *Deemed acquisition of eligible property pursuant to an election under section 338 or 336(e) by a member that leaves the group*—(i) *General rule (Consolidated Deemed Acquisition Rule).* This paragraph (c)(2) applies to certain transactions pursuant to which a transferee member acquires from a transferor member the stock of another member of the same consolidated group that holds eligible property (target) in either a qualified stock purchase for which a section 338 election is made or a qualified stock disposition described in § 1.336–2(b)(1) for which a section 336(e) election is made. Except as otherwise provided in paragraph (c)(3) or (4) of this section, if a transaction satisfies the requirements of paragraph (c)(2)(ii) of this section, then § 1.168(k)–2(b)(3)(iii)(C) does not apply to the transaction, and for all Federal income tax purposes—

(A) The target is treated as selling the eligible property to an unrelated person on the day after the deconsolidation date in exchange for an amount of cash equal to the deemed sale amount; and

(B) Immediately after the deemed sale in paragraph (c)(2)(i)(A) of this section, the target is treated as purchasing deemed replacement property from an unrelated person for an amount of cash equal to the deemed sale amount.

(ii) *Requirements.* A transaction satisfies the requirements of this paragraph (c)(2)(ii) if:

(A) The target's acquisition of the eligible property meets the requirements of § 1.168(k)–2(b)(3)(iii)(A) without regard to the Group Prior Use Rule;

(B) As part of the same series of related transactions that includes the qualified stock purchase or qualified stock disposition, the transferee member and the target cease to be members of the transferor member's consolidated group and cease to be related, within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c)(1)(ii) or (iii), to the transferor member; and

(C) The target's eligible property on the acquisition date (within the meaning of § 1.338–2(c)(1)) or the disposition date (within the meaning of § 1.336–1(b)(8)) continues to be eligible property on the deconsolidation date and the day after the deconsolidation date.

(3) *Disposition of depreciable property pursuant to the same series of related transactions.* Paragraph (c)(1) of this section does not apply if, following the acquisition of eligible property, the transferee member disposes of such property pursuant to the same series of related transactions that includes the property acquisition. Paragraph (c)(2) of this section does not apply if, following the deemed acquisition of eligible property, the target disposes of such property pursuant to the same series of related transactions that includes the qualified stock purchase or qualified stock disposition. See § 1.168(k)–2(b)(3)(iii)(C) for rules regarding the transfer of property in a series of related transactions. See also § 1.168(k)–2(g)(1) for rules regarding property placed in service and disposed of in the same taxable year. For purposes of this paragraph (c)(3), the deemed sale of eligible property by the transferee member or the target pursuant to paragraph (c)(1)(i)(A) or (c)(2)(i)(A) of this section is not treated as a "disposition" of such property.

(4) *Election to not apply paragraph (c)(1)(i) or (c)(2)(i) of this section*—(i) *In general.* If a transaction satisfies the requirements of the Consolidated Asset Acquisition Rule or the Consolidated Deemed Acquisition Rule in paragraph (c)(1)(ii) or (c)(2)(ii) of this section, respectively, the transferee member or the target nonetheless may elect not to apply the Consolidated Asset Acquisition Rule or the Consolidated Deemed Acquisition Rule, respectively, to all eligible property that is acquired or deemed acquired in such transaction. If a transferee member or target makes an election under this paragraph (c)(4) with respect to any transaction (designated transaction), then—

(A) The transferee member or target is deemed to have made such an election for all other transactions—

(*1*) That satisfy the requirements of the Consolidated Asset Acquisition Rule or the Consolidated Deemed Acquisition Rule;

(*2*) That are part of the same series of related transactions as the designated transaction; and

(*3*) In which the transferee member or target either is the same transferee member or target as in the designated transaction or is related, within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c)(1)(ii) or (iii), to the transferee member or target in the designated transaction immediately after the end of the series of related transactions; and

(B) Any eligible property acquired or deemed acquired in the designated transaction and in any transactions described in paragraph (c)(4)(i)(A) of this section does not satisfy either the original use requirement or the used property acquisition requirements in § 1.168(k)–2(b)(3) and, thus, is not "qualified property" within the meaning of § 1.168(k)–2(b)(1).

(ii) *Time and manner for making election*—(A) *Time to make election.* An election under this paragraph (c)(4) must be made by the due date, including extensions, for the Federal tax return for the taxable year of the transferee member or target that begins on the day after the deconsolidation date.

(B) *Manner of making election.* A transferee member or target, as applicable, makes the election under this paragraph (c)(4) by attaching a statement to its return for the taxable year that begins on the day after the deconsolidation date. The statement must describe the transaction(s) to which the Consolidated Asset Acquisition Rule or Consolidated Deemed Acquisition Rule otherwise would apply and state that the transferee member or the target, as applicable, is not claiming the additional first year depreciation deduction for any eligible property transferred in such transaction(s). If, at the time the election is made, the transferee member or the target is a member of a consolidated group, the statement is made by the agent for the group (within the meaning of § 1.1502–77(a) and (c)) on behalf of the transferee member or the target and is attached to the consolidated return of the group for the taxable year of the group that includes the taxable year of the transferee member or target that begins on the day after the deconsolidation date.

(C) *Additional procedural guidance.* The IRS may publish procedural guidance in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) that provides alternative procedures for complying with paragraph (c)(4)(ii)(A) or (B) of this section.

(iii) *Revocation of election.* An election specified in this paragraph (c)(4), once made, may be revoked only by filing a request for a private letter ruling and obtaining the Commissioner of Internal Revenue's written consent to revoke the election. The Commissioner may grant a request to revoke the election if the taxpayer acted reasonably and in good faith, and the revocation will not prejudice the interests of the Government. See generally § 301.9100–3 of this chapter. An election specified in this paragraph (c)(4) may not be revoked through a request under section 446(e) to change the taxpayer's method of accounting.

(d) *Examples.* For purposes of the examples in this section, unless otherwise stated: Parent, S, B, Controlled, and T are members of a consolidated group of which Parent is the common parent (Parent group); Parent owns all of the only class of stock of each of S, B, Controlled, and T; X is the common parent of the X consolidated group (X group); no member of the X group is related, within the meaning of section 179(d)(2)(A) or (B) and § 1.179–4(c)(1)(ii) or (iii) (Related), to any member of the Parent group; G and U are corporations that are not Related to each other or to any member of the Parent group or the X group; the Equipment in each example is eligible property; no member of the Parent group or the X group has had a depreciable interest in the Equipment within the lookback period; § 1.168(k)–2(b)(3)(iii)(A)(*1*) is referred to as the No Prior Use Requirement; and § 1.168(k)–2(b)(3)(iii)(A)(*2*) is referred to as the Unrelated Party Requirement. The rules of this section are illustrated by the following examples.

(1) *Example 1: Intercompany sale of eligible property*—(i) *Facts.* S has a depreciable interest in Equipment #1. In 2018, S sells Equipment #1 to B, and B places Equipment #1 in service in the same year.

(ii) *Analysis.* B's acquisition of Equipment #1 does not satisfy either the No Prior Use Requirement or the Unrelated Party Requirement. Under the Group Prior Use Rule, B is treated as previously having a depreciable interest in Equipment #1 because B (a member of the Parent group) acquired Equipment #1 and S, while a member of the Parent group, had a depreciable interest in Equipment #1 within the lookback period. In addition, B acquires Equipment #1 from S, and B and S are Related at the time of the acquisition. Accordingly, B is not eligible to claim the additional first year depreciation deduction for Equipment #1 in 2018.

(2) *Example 2: Sale outside of the consolidated group followed by a reacquisition within the lookback period*—(i) *Facts.* S has a depreciable interest in Equipment #2. In 2018, S sells Equipment #2 to G. In 2019, in an unrelated transaction, B acquires Equipment #2 from G and places it in service in the same year.

(ii) *Analysis.* B's acquisition of Equipment #2 does not satisfy the No Prior Use Requirement as a result of the Group Prior Use Rule. Pursuant to the Group Prior Use Rule, B is treated as previously having a depreciable interest in Equipment #2 because B is a member of the Parent group and S, while a member of the Parent group, had a depreciable interest in Equipment #2 within the lookback period. Thus, B is not eligible to claim the additional first year depreciation deduction for Equipment #2 in 2019. The result would be the same if, after selling Equipment #2 to G, S had ceased to be a member of the Parent group prior to B's acquisition of Equipment #2.

(iii) *Sale outside of the consolidated group followed by a reacquisition beyond the lookback period.* The facts are the same as in paragraph (d)(2)(i) of this section, except that B acquires Equipment #2 and places it in service in 2024 instead of 2019. B's acquisition of Equipment #2 satisfies the No Prior Use Requirement. B would not be treated as previously having a depreciable interest in Equipment #2 under the Group Prior Use Rule because the Parent group did not have a depreciable interest in Equipment #2 within the lookback period. Further, B itself did not have a prior depreciable interest in Equipment #2 within the lookback period. Assuming all other requirements in § 1.168(k)–2 are satisfied, B is eligible to claim the additional first year depreciation deduction for Equipment #2 in 2024. The result would be the same if S, rather than B, acquired and placed in service Equipment #2 in 2024.

(3) *Example 3: Acquisition of eligible property by the consolidated group followed by a corporation with a prior depreciable interest joining the group as part of the same series of related transactions*—(i) *Facts.* G has a depreciable interest in Equipment #3. During 2018, G sells Equipment #3 to U. In a series of related transactions that does not include the 2018 sale, Parent acquires all of the stock of G in 2019. Later in 2019, B purchases Equipment #3 from U and places it in service immediately thereafter.

(ii) *Analysis.* B's acquisition of Equipment #3 does not satisfy the No Prior Use Requirement as a result of the Stock and Asset Acquisition Rule. In a series of related transactions, G became a member of the Parent group and B acquired Equipment #3. Because G had a depreciable interest in Equipment #3 within the lookback period, B is treated as having a depreciable interest in Equipment #3 under the Stock and Asset Acquisition Rule. Thus, B is not eligible to claim the additional first year depreciation deduction for Equipment #3 in 2019.

(iii) *B purchases Equipment #3 in 2024.* The facts are the same as in paragraph (d)(3)(i) of this section, except that B acquires and places in service Equipment #3 in 2024 instead of 2019. B is not treated under the Stock and Asset Acquisition Rule as having a prior depreciable interest in Equipment #3 because G (which sold Equipment #3 to U in 2018) did not have a depreciable interest in Equipment #3 within the lookback period. In addition, B is not treated under the Group Prior Use Rule as having a prior depreciable interest in

Equipment #3 at the time of the purchase because neither G nor any other member of the Parent group had a depreciable interest in Equipment #3 while a member of the Parent group within the lookback period. Further, B itself did not have a depreciable interest in Equipment #3 within the lookback period. Accordingly, B's acquisition of Equipment #3 satisfies the No Prior Use Requirement. Assuming all other requirements in § 1.168(k)–2 are satisfied, B is eligible to claim the additional first year depreciation deduction for Equipment #3 in 2024.

(iv) *No series of related transactions.* The facts are the same as in paragraph (d)(3)(i) of this section, except that Parent's acquisition of the G stock and B's purchase of Equipment #3 are not part of the same series of related transactions. Because B's purchase of Equipment #3 and Parent's acquisition of the G stock did not occur pursuant to the same series of related transactions, the Stock and Asset Acquisition Rule does not apply. In addition, B is not treated under the Group Prior Use Rule as having a prior depreciable interest in Equipment #3 at the time of the purchase because neither G nor any other member of the Parent group had a depreciable interest in Equipment #3 while a member of the Parent group within the lookback period. Further, B itself did not have a depreciable interest in Equipment #3 within the lookback period. Accordingly, B's acquisition of Equipment #3 satisfies the No Prior Use Requirement. Assuming all other requirements in § 1.168(k)–2 are satisfied, B is eligible to claim the additional first year depreciation deduction for Equipment #3 in 2019.

(4) *Example 4: Termination of the consolidated group*—(i) *Facts.* S owns Equipment #4. In 2018, S sells Equipment #4 to U. In 2019, X acquires all of the stock of Parent in a transaction that causes the Parent group to terminate and Parent, B, and S to become members of the X group. In 2020, in a transaction that is not part of a series of related transactions, B purchases Equipment #4 from U and places it in service in the same year.

(ii) *Analysis.* B's acquisition of Equipment #4 satisfies the No Prior Use Requirement. The Group Prior Use Rule does not apply to treat B as having a prior depreciable interest in Equipment #4 because B is a member of the X group and no member of the X group had a depreciable interest in Equipment #4 while a member of the X group within the lookback period. Further, B itself did not have a prior depreciable interest in Equipment #4 within the lookback period. Assuming all other requirements in § 1.168(k)–2 are satisfied, B is eligible to claim the additional first year depreciation deduction for Equipment #4 in 2020.

(iii) *S purchases Equipment #4 in 2020.* The facts are the same as in paragraph (d)(4)(i) of this section, except that S rather than B purchases and places in service Equipment #4 in 2020. S's purchase of Equipment #4 does not satisfy the No Prior Use Requirement because S had a depreciable interest in Equipment #4 within the lookback period. Thus, S is not eligible to claim the additional first year depreciation deduction for Equipment #4 in 2020.

(iv) *Acquisitions are part of the same series of related transactions.* The facts are the same as in paragraph (d)(4)(i) of this section, except that X's acquisition of the Parent stock and B's purchase of Equipment #4 are part of the same series of related transactions. Thus, pursuant to the same series of related transactions, S became a member of the X group and B (another member of the X group) acquired Equipment #4. Because S had a depreciable interest in Equipment #4 within the lookback period, B is treated as having a depreciable interest in Equipment #4 under the Stock and Asset Acquisition Rule. As a result, B's acquisition of Equipment #4 does not satisfy the No Prior Use Requirement, and B is not eligible to claim the additional first year depreciation deduction for Equipment #4 in 2020.

(5) *Example 5: Intercompany sale of eligible property followed by sale of B stock as part of the same series of related transactions*—(i) *Facts.* S has a depreciable interest in Equipment #5. On January 1, 2019, B purchases Equipment #5 from S and places it in service. On June 1, 2019, as part of the same series of related transactions that includes B's purchase of Equipment #5, Parent sells all of the stock of B to X. Thus, B leaves the Parent group at the end of the day on June 1, 2019, and B is a member of the X group starting June 2, 2019. See § 1.1502–76(b). As of June 1, 2019, Equipment #5 remains eligible property.

(ii) *Analysis*—(A) *Application of the Consolidated Asset Acquisition Rule.* B was a member of the Parent group when it acquired Equipment #5. Because S, another member of the Parent group, had a depreciable interest in Equipment #5 while a member of the group within the lookback period, B would be treated as having a prior depreciable interest in Equipment #5 under the Group Prior Use Rule and B's acquisition of Equipment #5 would not satisfy the No Prior Use Requirement. However, B's acquisition of Equipment #5 satisfies the requirements of the Consolidated Asset Acquisition Rule in paragraph (c)(1)(ii) of this section. First, B's acquisition of Equipment #5 meets the requirements of § 1.168(k)–2(b)(3)(iii)(A) without regard to the related-party tests under section 179(d)(2)(A) or (B) and § 1.179–4(c)(1)(ii) or (iii) or the Group Prior Use Rule. Second, as part of the same series of related transactions that includes B's acquisition of Equipment #5, B ceases to be a member of the Parent group and ceases to be Related to S. Third, Equipment #5 continues to be eligible property on the deconsolidation date (June 1, 2019).

(B) *Consequences of the Consolidated Asset Acquisition Rule.* Under the Consolidated Asset Acquisition Rule, B is treated for all Federal income tax purposes as transferring Equipment #5 to an unrelated person on June 2, 2019, in exchange for an amount of cash equal to the deemed sale amount and, immediately thereafter, acquiring deemed replacement property (New Equipment #5) from an unrelated person for an amount of cash equal to the deemed sale amount. Accordingly, assuming all other requirements in § 1.168(k)–2 are satisfied, B is eligible to claim the additional first year depreciation for an amount equal to the deemed sale amount for the taxable year in which it places New Equipment #5 in service.

(iii) *Distribution of B.* The facts are the same as in paragraph (d)(5)(i) of this section, except that, on June 1, 2019, Parent distributes the stock of B to its shareholders (which are not Related to S) in a distribution that qualifies for nonrecognition under section 355(a). Accordingly, the Consolidated Asset Acquisition Rule applies. As in paragraph (d)(5)(ii)(B) of this section, assuming all other requirements in § 1.168(k)–2 are satisfied, B is eligible to claim the additional first year depreciation deduction for an amount equal to the deemed sale amount for the taxable year in which it places New Equipment #5 in service.

(iv) *Equipment #5 ceases to be eligible property.* The facts are the same as in paragraph (d)(5)(i) of this section, except that, on June 1, 2019, Equipment #5 is no longer eligible property. The Consolidated Asset Acquisition Rule does not apply because B's acquisition of Equipment #5 fails to satisfy the requirement in paragraph (c)(1)(ii)(C) of this section that the acquired eligible property continue to be eligible property on the deconsolidation date. Therefore, B's acquisition of Equipment #5 on January 1, 2019, fails to satisfy the No Prior Use Requirement. Under the Group Prior Use Rule, B is treated as having a prior depreciable interest in Equipment #5 because B is a member of the Parent group and S, while a member of the Parent group, had a depreciable interest in Equipment #5 within the lookback period. Accordingly, B is not eligible to claim the additional first year depreciation deduction with respect to Equipment #5 in 2019.

(6) *Example 6: Intercompany sale of member stock for which a section 338(h)(10) election is made followed by sale of B stock as part of a series of related transactions*—(i) *Facts.* S owns all of the stock of T, which has a depreciable interest in Equipment #6. On January 1, 2019, B purchases all of the T stock from S in a qualified stock purchase for which a section 338(h)(10) election is made. On June 1, 2019, as part of the same series of related transactions that includes B's purchase of the T stock, Parent sells all of the stock of B to X. Thus, B and T leave the Parent group at the end of the day on June 1, 2019, and B and T are members of the X group starting June 2, 2019. See § 1.1502–76(b). As of June 1, 2019, Equipment #6 remains eligible property.

(ii) *Analysis*—(A) *Section 338(h)(10) election.* Pursuant to the section 338(h)(10) election, Old T is treated as transferring all of its assets, including Equipment #6, to an unrelated person in a single transaction in exchange for consideration at the close of the acquisition date (January 1, 2019), and New T is treated as acquiring all of its assets, including Equipment #6, from an unrelated person in exchange for consideration. Old T is deemed to liquidate following the deemed asset sale. See § 1.338–1(a)(1).

(B) *Application of the Consolidated Deemed Acquisition Rule.* New T was a member of the Parent group when New T acquired Equipment #6 from an unrelated person. Because Old T, another member of the Parent group, had a depreciable interest in Equipment #6 while a member of the group within the lookback period, New T would be treated as having a prior depreciable interest in Equipment #6 under the Group Prior Use Rule and New T's acquisition of Equipment #6 would not satisfy the No Prior Use Requirement. However, New T's acquisition of Equipment #6 satisfies the requirements of the Consolidated Deemed Acquisition Rule in paragraph (c)(2)(ii) of this section. First, New T's acquisition of Equipment #6 meets the requirements of § 1.168(k)–2(b)(3)(iii)(A) without regard to the Group Prior Use Rule. Second, as part of the same series of related transactions that includes B's qualified stock purchase of the T stock, B and New T cease to be members of the Parent group and cease to be Related to S. Third, Equipment #6 continues to be eligible property on the deconsolidation date (June 1, 2019).

(C) *Consequences of the Consolidated Deemed Acquisition Rule.* Under the Consolidated Deemed Acquisition Rule, New T is treated for all Federal income tax purposes as transferring Equipment #6 to an unrelated person on June 2, 2019, in exchange for an amount of cash equal to the deemed sale amount and, immediately thereafter, acquiring deemed replacement property (New Equipment #6) from an unrelated person for an amount of cash equal to the deemed sale amount. Accordingly, assuming all other requirements in § 1.168(k)–2 are satisfied, New T is eligible to claim the additional first year depreciation deduction for an amount equal to the deemed sale amount for the taxable year in which it places New Equipment #6 in service.

(iii) *T owns multiple assets.* The facts are the same as in paragraph (d)(6)(i) of this section, except that, in addition to Equipment #6, T also owns Asset A (depreciable real estate that is not eligible property). With respect to Equipment #6, the results are the same as in paragraph (d)(6)(ii) of this section. However, the Consolidated Deemed Acquisition Rule does not apply to Asset A because it is not eligible property. Accordingly, New T is not treated as transferring Asset A to an unrelated person on June 2, 2019 and then, immediately thereafter, acquiring deemed replacement property for Asset A. If Equipment #6 had ceased to be eligible property as of June 1, 2019, the Consolidated Deemed Acquisition Rule also would not apply to Equipment #6.

(7) *Example 7: Section 355 transaction following a section 338(h)(10) transaction pursuant to the same series of related transactions*—(i) *Facts.* T has a depreciable interest in Equipment #7. On January 1, 2019, Parent contributes all of the stock of T to B in exchange for common and non-voting preferred stock of B and sells the non-voting preferred stock of B to U pursuant to a binding commitment entered into prior to the contribution (T Exchange). The non-voting preferred stock is not treated as ''stock'' for purposes of section 1504(a). See section 1504(a)(4). Parent and B jointly make an election under section 338(h)(10) with respect to the T Exchange. On June 1, 2019, as part of the same series of related transactions that includes the T Exchange, Parent contributes the stock of B and assets comprising an active trade or business (within the meaning of section 355(b)) to Controlled in exchange for Controlled common stock and then distributes the Controlled common stock to Parent's shareholders in a distribution qualifying under section 355(a) (Controlled Distribution). In the Controlled Distribution, T and B cease to be Related to Parent. Equipment #7 remains eligible property on June 1, 2019.

(ii) *Section 338(h)(10) election.* Immediately after the Controlled Distribution, Parent and B are not related as determined under section 338(h)(3)(A)(iii). Further, B's basis in the T stock is not determined, in whole or in part, by reference to the adjusted basis of the T stock in the hands of Parent, and the stock is not acquired in an exchange to which section 351, 354, 355, or 356 applies. Accordingly, the T Exchange qualifies as a ''purchase'' within the meaning of section 338(h)(3). Pursuant to the section 338(h)(10) election, Old T is treated as transferring all of its assets, including Equipment #7, to an unrelated person in a single transaction in exchange for consideration at the close of the acquisition date (January 1, 2019), and New T is treated as acquiring all of its assets, including Equipment #7, from an unrelated person in exchange for consideration. Old T is deemed to liquidate following the deemed asset sale. See § 1.338–1(a)(1).

(iii) *Application of the Consolidated Deemed Acquisition Rule.* New T was a member of the Parent group when New T acquired Equipment #7 from an unrelated person. Because Old T, another member of the Parent group, had a depreciable interest in Equipment #7 while a member of the group within the lookback period, New T would be treated as having a prior depreciable interest in Equipment #7 under the Group Prior Use Rule and New T's acquisition of Equipment #7 would not satisfy the No Prior Use Requirement. However, New T's acquisition of Equipment #7 satisfies the requirements of the Consolidated Deemed Acquisition Rule in paragraph (c)(2)(ii) of this section. Thus, New T is treated for all Federal income tax purposes as transferring Equipment #7 to an unrelated person on June 2, 2019, in exchange for an amount of cash equal to the deemed sale amount and, immediately thereafter, acquiring deemed replacement property (New Equipment #7) from an unrelated person for an amount of cash equal to the deemed sale amount. Accordingly, assuming all other requirements in § 1.168(k)–2 are satisfied, New T is eligible to claim the additional first year depreciation deduction for an amount equal to the deemed sale amount for the taxable year in which it places New Equipment #7 in service.

(e) *Applicability dates*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to—

(i) Depreciable property acquired after September 27, 2017, by the taxpayer and placed in service by the taxpayer during or after the taxpayer's taxable year that begins on or after January 1, 2021;

(ii) A specified plant for which the taxpayer properly made an election to apply section 168(k)(5) and that is planted, or grafted to a plant that was previously planted, by the taxpayer during or after the taxpayer's taxable year that begins on or after January 1, 2021; and

(iii) Components acquired or self-constructed after September 27, 2017, of larger self-constructed property described in § 1.168(k)–2(c)(2) and placed in service by the taxpayer during or after the taxpayer's taxable year that begins on or after January 1, 2021.

(2) *Early application of this section and § 1.168(k)–2*—(i) *In general.* Subject to paragraphs (e)(2)(ii) and (iii) of this section, and provided that all members of a consolidated group consistently apply the same set of rules, a taxpayer may choose to apply both the rules of this section and the rules of § 1.168(k)–2, in their entirety and in a consistent manner, to—

(A) Depreciable property acquired after September 27, 2017, by the taxpayer and placed in service by the taxpayer during a taxable year ending on or after September 28, 2017;

(B) A specified plant for which the taxpayer properly made an election to apply section 168(k)(5) and that is planted, or grafted to a plant that was previously planted, after September 27, 2017, by the taxpayer during a taxable year ending on or after September 28, 2017; and

(C) Components acquired or self-constructed after September 27, 2017, of larger self-constructed property described in § 1.168(k)–2(c)(2) and placed in service by the taxpayer during a taxable year ending on or after September 28, 2017.

(ii) *Early application to certain transactions.* In the case of property described in paragraph (e)(2)(i) of this section that is acquired in a transaction that satisfies the requirements of paragraph (c)(1)(ii) or (c)(2)(ii) of this section, the taxpayer may apply the rules of this section and the rules of § 1.168(k)–2, in their entirety and in a consistent manner, to such property only if those rules are applied, in their entirety and in a consistent manner, by all parties to the transaction (including the transferor member, the transferee member, and the target, as applicable) and the consolidated groups of which they are members, for the taxable year(s) in which the transaction occurs and the taxable year(s) that includes the day after the deconsolidation date.

(iii) *Bound by early application.* Once a taxpayer applies the rules of this section and the rules of § 1.168(k)–2, in their entirety, for a taxable year, the taxpayer must continue to apply the rules of this section and the rules of § 1.168(k)–2, in their entirety, for the taxpayer's subsequent taxable years.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: September 16, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

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