

26 CFR 1.168(k)-1: Additional first year depreciation.
(Also Part 1, § 179.)

Rev. Proc. 2017-XX

SECTION 1. PURPOSE

This revenue procedure provides guidance under §§ 124(c)(2), 124(d), 124(e), 143(b), and 167(b) of the Protecting Americans From Tax Hikes Act of 2015 (PATH Act), enacted as part of the Consolidated Appropriations Act, 2016, Division Q, Pub. L. No. 114-113, 129 Stat. 2242 (December 18, 2015). Sections 124(c)(2), (d), and (e) amend § 179 of the Internal Revenue Code by (i) making permanent the treatment of qualified real property as § 179 property under § 179(f), (ii) making permanent the permission granted under § 179(c)(2) to revoke without the consent of the Commissioner of Internal Revenue any election made under § 179 and any specification contained in that election, and (iii) allowing certain air conditioning or heating units to be eligible as § 179 property under § 179(d)(1). Section 143(b) of the PATH Act amends § 168(k) by (i) extending the placed-in-service date for property to qualify for the additional first year depreciation deduction, (ii) modifying the definition of qualified property under §§ 168(k)(2) and (3), (iii) extending and modifying the election

under § 168(k)(4) to increase the alternative minimum tax (AMT) credit limitation in lieu of the additional first year depreciation deduction, (iv) adding § 168(k)(5), which allows a taxpayer to elect to deduct the additional first year depreciation for certain plants bearing fruits and nuts before such plants are placed in service, (v) adding § 168(k)(6), which provides a phase down of the additional first year depreciation deduction percentage for future taxable years, and (vi) adding § 168(k)(7), which allows a taxpayer to elect not to deduct additional first year depreciation for any class of property. Section 167(b) of the PATH Act amends § 168(j) by adding new § 168(j)(8), which allows a taxpayer to elect not to apply § 168(j) for any class of property. This revenue procedure does not reflect any proposed technical corrections to the PATH Act. This revenue procedure also does not provide guidance relating to the extension and modification of the election under § 168(k)(4) to increase the AMT credit limitation in lieu of the additional first year depreciation deduction. The Treasury Department and IRS anticipate issuing guidance regarding the extension and modification of the election under § 168(k)(4) in a separate revenue procedure.

SECTION 2. BACKGROUND

.01 Modifications to § 179.

(1) Section 179(a) allows a taxpayer to elect to treat the cost (or a portion of the cost) of any § 179 property as an expense for the taxable year in which the taxpayer places the property in service. Section 179(b)(1) and section 179(b)(2) prescribe a dollar limitation on the aggregate cost of § 179 property that can be treated as an expense under § 179(a). The dollar limitation is the amount under § 179(b)(1) (the § 179(b)(1) limitation), reduced (but not below zero) by the amount by which the cost of

§ 179 property placed in service during the taxable year exceeds the amount under § 179(b)(2) (the § 179(b)(2) limitation). For taxable years beginning after 2014, the § 179(b)(1) limitation is \$500,000 and the § 179(b)(2) limitation is \$2,000,000. Pursuant to § 179(b)(6), these limitation amounts are adjusted for inflation for taxable years beginning after 2015. For taxable years beginning in 2016, section 3.03 of Rev. Proc. 2016-14, 2016-9 I.R.B. 365, provides that the § 179(b)(1) limitation and the § 179(b)(2) limitation, adjusted for inflation, are \$500,000 and \$2,010,000, respectively. For taxable years beginning in 2017, section 3.03 of Rev. Proc. 2016-55, 2016-45 I.R.B. 707, provides that the § 179(b)(1) limitation and the § 179(b)(2) limitation, adjusted for inflation, are \$510,000 and \$2,030,000, respectively.

(2) Section 179(b)(3)(A) provides that a taxpayer's § 179 deduction for any taxable year, after application of the § 179(b)(1) and (2) limitations, is limited to the taxpayer's taxable income for that taxable year that is derived from the taxpayer's active conduct of any trade or business during that taxable year (taxable income limitation). Section 179(b)(3)(B) provides that the amount of any cost of § 179 property elected to be expensed in a taxable year that is disallowed as a § 179 deduction under the taxable income limitation may be carried forward for an unlimited number of years and may be deducted under § 179(a) in a future year, subject to the same limitations.

(3) If a taxpayer elects to apply § 179(f), § 179 property includes qualified real property, as defined in § 179(f)(1) and (2). Prior to amendment by the PATH Act, § 179(f) applied to qualified real property placed in service in any taxable year beginning in 2010, 2011, 2012, 2013, or 2014. Section 124(c)(1) of the PATH Act extended the application of § 179(f) to qualified real property placed in service in any taxable year

beginning after 2009 and before 2016. As a result of the amendment by § 124(c)(1) of the PATH Act, § 179(f)(3) provided that the maximum amount of qualified real property that may be expensed under § 179(a) for any taxable year beginning after 2009 and before 2016 was \$250,000. Further, § 179(f)(4) provided that, notwithstanding § 179(b)(3)(B), a taxpayer that elected to apply § 179(f) and elected to expense under § 179(a) the cost (or a portion of the cost) of qualified real property placed in service during any taxable year beginning after 2009 and before 2016 could not carryover to any taxable year beginning after 2015 the amount of any cost of such property that was disallowed as a § 179 deduction under the taxable income limitation of § 179(b)(3)(A). To the extent that any § 179 deduction attributable to qualified real property was not allowed to be carried over to a taxable year beginning after 2015, that amount was required to be treated as an amount for which an election under § 179 was not made and as property placed in service on the first day of the taxpayer's last taxable year beginning in 2015 for purposes of computing depreciation. Rev. Proc. 2016-48, 2016-37 I.R.B. 348, provides guidance under § 124(c)(1) of the PATH Act.

Section 124(c)(2) of the PATH Act further amends § 179(f) by making permanent the treatment of qualified real property as § 179 property if the taxpayer elects to apply § 179(f). Section 124(c)(2) of the PATH Act also amends § 179(f) by striking paragraphs (3) and (4). Section 124(g)(2) of the PATH Act provides that the amendments made by § 124(c)(2) of the PATH Act apply to taxable years beginning after December 31, 2015. Section 3.01 of this revenue procedure clarifies the application of these revised rules.

(4) Section 179(c) provides the rules for making and revoking elections under § 179 (§ 179 election). Pursuant to § 179(c)(1), a § 179 election is made in the manner prescribed by regulations. Prior to amendment by § 124(d) of the PATH Act, § 179(c)(2) provided that a § 179 election for taxable years beginning after 2002 and before 2015 may be revoked by the taxpayer with respect to any § 179 property. Section 1.179-5(c)(1) of the Income Tax Regulations provides that for any taxable year beginning after 2002 and before 2008, a taxpayer is permitted to make or revoke a § 179 election without the consent of the Commissioner on an amended federal tax return for that taxable year. Section 1.179-5(c) was promulgated in 2005 and has not been amended to reflect the extensions of § 179(c)(2) to 2015. However, in 2008, the Treasury Department and the Internal Revenue Service (IRS) issued Rev. Proc. 2008-54, 2008-2 C.B. 722. Section 7 of Rev. Proc. 2008-54 provided that for a taxable year beginning after 2007 and before the last year provided in § 179(c)(2) for revoking a § 179 election by a taxpayer for any § 179 property, the taxpayer will be permitted to make a § 179 election on an amended return for that taxable year without the Commissioner's consent. Section 7 of Rev. Proc. 2008-54 further provided that until § 1.179-5(c) is amended to incorporate this guidance, taxpayers may rely on such guidance.

Section 124(d) of the PATH Act amends § 179(c)(2) to make permanent the permission granted to a taxpayer to revoke a § 179 election for any § 179 property without the Commissioner's consent. This amendment applies to taxable years beginning after 2014. As a result, some taxpayers are uncertain about whether a § 179 election for taxable years beginning after 2014 may be made on an amended Federal

tax return without the Commissioner's consent. Section 3.02 of this revenue procedure provides the rules for making such a § 179 election.

(5) Section 179(d)(1) defines the term "section 179 property." Prior to amendment by the PATH Act, § 179(d)(1) defined § 179 property as property that is: (A)(i) tangible property to which § 168 applies, or (ii) computer software, as defined in § 197(e)(3)(B), that is described in § 197(e)(3)(A)(i), to which § 167 applies, and that is placed in service in a taxable year beginning after 2002 and before 2015; (B) § 1245 property, as defined in § 1245(a)(3); and (C) acquired by purchase for use in the active conduct of a trade or business. Prior to amendment by the PATH Act, § 179(d)(1) further provided that § 179 property does not include any property described in § 50(b) and does not include air conditioning or heating units.

Section 124(b) of the PATH Act amends § 179(d)(1)(A)(ii) to make permanent the treatment of computer software, as defined in § 197(e)(3)(B), that is described in § 197(e)(3)(A)(i), to which § 167 applies, as § 179 property. This amendment applies to taxable years beginning after 2014. Section 124(e) of the PATH Act also amends § 179(d)(1) to allow air conditioning or heating units to be § 179 property. This amendment applies to taxable years beginning after 2015.

Some taxpayers have inquired about what types of air conditioning or heating units qualify as § 179 property. Section 3.03 of this revenue procedure provides guidance on this issue.

.02 Modifications to § 168(k).

(1) Prior to amendment by the PATH Act, § 168(k)(1) allowed a 50-percent additional first year depreciation deduction for qualified property that, as provided by §

168(k)(2)(A), was acquired by a taxpayer after 2007 and placed in service by the taxpayer before 2015 (before 2016 in the case of property described in § 168(k)(2)(B) or (C)). Section 143(a)(1) of the PATH Act amends § 168(k)(2) by extending the placed-in-service date to before 2016 (before 2017 in the case of property described in § 168(k)(2)(B) or (C)), and extending other dates in § 168(k)(2) by changing “January 1, 2016” to “January 1, 2017” in § 168(k)(2)(A)(iv) and changing “January 1, 2015” each place it appears to “January 1, 2016”. Rev. Proc. 2016-48 provides guidance under § 143(a)(1) of the PATH Act.

(2) Section 143(b)(1) of the PATH Act further amends § 168(k)(2) by extending the placed-in-service date to before 2020 (before 2021 in the case of property described in § 168(k)(2)(B) or (C)), and by modifying the definition of qualified property. As amended by § 143(b)(1) of the PATH Act, qualified property under § 168(k)(2)(A) includes property that is qualified improvement property instead of qualified leasehold improvement property. The term “qualified improvement property” is defined in § 168(k)(3), as amended by § 143(b)(2) of the PATH Act. Further, qualified property no longer has to meet the acquisition date requirements in § 168(k)(2)(A)(iii) as in effect before the enactment of the PATH Act. Section 143(b)(1) of the PATH Act also modifies the property described in § 168(k)(2)(B) and (C), including imposing a new acquisition date requirement.

Section 143(b)(5) of the PATH Act amends § 168(k) by adding § 168(k)(6) to the Code. It provides that the additional first year depreciation deduction percentage of 50 percent is phased down beginning for qualified property placed in service after December 31, 2017 (after December 31, 2018, for property described in § 168(k)(2)(B)

or (C)). The percentage is 40 percent for qualified property placed in service in 2018 (in 2019 for property described in § 168(k)(2)(B) or (C), determined by substituting “2019” for “2020” in § 168(k)(2)(B)(i)(III) and (ii), and § 168(k)(2)(E)(i)), and is 30 percent for qualified property placed in service in 2019 (in 2020 for property described in § 168(k)(2)(B) or (C)).

Section 143(b)(6)(D) of the PATH Act further amends § 168(k) by adding § 168(k)(7) to the Code. It allows a taxpayer to elect not to deduct additional first year depreciation for any class of property placed in service by the taxpayer in the same taxable year. This election is similar to the election provided under § 168(k)(2)(D)(iii) as in effect before the enactment of the PATH Act.

Pursuant to § 143(b)(7)(A) of the PATH Act, these amendments apply to property placed in service after December 31, 2015. Sections 4.01 through 4.04 of this revenue procedure clarify the application of these revised rules. Section 4.01(2)(b) also states the guidance previously provided in section 5.02 of Rev. Proc. 2008-54 regarding the nonrefundable deposit requirement for property described in § 168(k)(2)(C).

(3) Section 143(b)(4) of the PATH Act also amends § 168(k) by adding § 168(k)(5) to the Code. It allows a taxpayer to elect to deduct additional first year depreciation for any specified plant that is planted before January 1, 2020, or grafted before that date to a plant that has already been planted, by the taxpayer in the ordinary course of its farming business, as defined in § 263A(e)(4). If the taxpayer makes this election, the additional first year depreciation deduction is allowable for any specified plant for the taxable year in which that specified plant is planted or grafted and that specified plant is not treated as qualified property under § 168(k) in the plant's placed-in-service year.

The percentage of the additional first year depreciation deduction is (i) 50 percent for any specified plant planted or grafted after 2015 and before 2018, (ii) 40 percent for any specified plant planted or grafted during 2018, and (iii) 30 percent for any specified plant planted or grafted during 2019.

A specified plant is defined in § 168(k)(5)(B) as (i) any tree or vine that bears fruits or nuts, and (ii) any other plant that will have more than one yield of fruits or nuts and that generally has a pre-productive period of more than two years from the time of planting or grafting to the time at which such plant begins bearing fruits or nuts. The term “specified plant” does not include any property that is planted or grafted outside of the United States.

Section 143(b)(7)(C) of the PATH Act provides that § 168(k)(5) applies to specified plants, as defined in § 168(k)(5)(B), planted or grafted after December 31, 2015.

Section 4.05 of this revenue procedure provides procedures for making the election to apply § 168(k)(5) (§ 168(k)(5) election). In addition, if such election is made for a specified plant, some taxpayers are uncertain about whether a § 179 election for the specified plant in its placed-in-service year is based on the adjusted basis of the specified plant, or on the original cost of the specified plant by recapturing the additional first year depreciation deduction. Section 4.05 of this revenue procedure also clarifies how the § 168(k)(5) election interacts with the § 179 election.

.03 Modification to § 168(j).

(1) Section 168(j) provides that for purposes of § 168(a), the applicable recovery period for qualified Indian reservation property is determined in accordance

with the table contained in § 168(j)(2) instead of the table contained in § 168(c). The term “qualified Indian reservation property” is defined in § 168(j)(4). Section 168(j) does not apply to property placed in service after December 31, 2016.

(2) Section 167(b) of the PATH Act amends § 168(j) by redesignating paragraph (8), as amended by § 167(a) of the PATH Act, as paragraph (9), and by adding new paragraph (8). New § 168(j)(8) allows a taxpayer to elect not to apply § 168(j) for all property that is in the same class of property and placed in service in the same taxable year (the § 168(j)(8) election). Once made, this election is irrevocable. Section 167(c)(2) of the PATH Act provides that the amendments made by § 167(b) of the PATH Act apply to taxable years beginning after December 31, 2015. Section 5 of this revenue procedure provides the procedures for making the § 168(j)(8) election.

.04 Subsequent References. Unless otherwise specifically stated, all references in the subsequent sections of this revenue procedure to § 168(k), § 168(j), and § 179 are to § 168(k), § 168(j), and § 179 as in effect after the enactment of the PATH Act.

SECTION 3. SECTION 179 EXPENSING

.01 Qualified Real Property. For any taxable year beginning after December 31, 2015, the § 179(b)(1) and § 179(b)(2) limitation amounts, and the carryover rules in § 179(b)(3)(B) and § 1.179-3(a), apply to qualified real property placed in service by the taxpayer during that taxable year if the taxpayer elects to apply § 179(f).

.02 Making § 179 Elections by Amended Returns. For any taxable year beginning after 2014, a taxpayer may make a § 179 election with respect to any § 179 property without the Commissioner’s consent on an amended federal tax return for the taxable year in which the taxpayer places in service the § 179 property. The Treasury

Department and the IRS intend to amend § 1.179-5(c) to incorporate the guidance set forth under this section 3.02. Until § 1.179-5(c) is amended, taxpayers may rely on the guidance set forth in this section 3.02.

.03 Air Conditioning or Heating Units Qualifying as § 179 Property.

(1) In general. Except as provided in section 3.03(2), an air conditioning or heating unit qualifies as § 179 property if such unit is § 1245 property, depreciated under § 168, acquired by purchase for use in the active conduct of the taxpayer's trade or business, and placed in service by the taxpayer in a taxable year beginning after 2015. For example, portable air conditioners and heaters such as window air conditioning units and portable plug-in unit heaters that are placed in service by the taxpayer in a taxable year beginning after 2015 may qualify as § 179 property under § 179(d)(1) and § 1.179-4(a). Except as provided in section 3.03(2), an example of an air conditioning or heating unit that will not qualify as § 179 property is any component of a central air conditioning or heating system of a building, including motors, compressors, pipes, and ducts, whether the component is in, on, or adjacent to the building. See § 1.48-1(e)(2).

(2) Qualified real property. If a component of a central air conditioning or heating system of a building meets the definition of qualified real property, as defined in § 179(f)(2), and the component is placed in service by the taxpayer in a taxable year beginning after 2015, the component may qualify as § 179 property if the taxpayer elects to apply § 179(f).

SECTION 4. ADDITIONAL FIRST YEAR DEPRECIATION (§ 168(k))

.01 Qualified Property.

(1) In general. The rules for determining whether depreciable property is eligible for the additional first year depreciation deduction under § 168(k) are similar to the rules in § 168(k) as in effect before the enactment of the PATH Act. However, qualified property under § 168(k)(2)(A) includes property that is qualified improvement property instead of qualified leasehold improvement property. Further, the acquisition date requirement in § 168(k)(2)(A)(iii) and the related party rules in § 168(k)(2)(E)(iv), both as in effect before the enactment of the PATH Act, do not apply. However, a new acquisition date requirement applies for property described in § 168(k)(2)(B) or (C).

(2) Property described in § 168(k)(2)(B) or (C).

(a) Acquisition date requirement. Qualified property includes any property described in § 168(k)(2)(B) or (C). Pursuant to §§ 168(k)(2)(B)(i)(III) and (C)(i), property is described in § 168(k)(2)(B) or (C) if the property is acquired by the taxpayer before January 1, 2020, or is acquired pursuant to a written contract entered into before January 1, 2020, assuming all other requirements in § 168(k)(2)(B) or (C), as applicable, are met. The rules in § 1.168(k)-1(b)(4) for “qualified property” or for “30-percent additional first year depreciation deduction” apply to determine if the acquisition requirement is met. However, in applying § 1.168(k)-1(b)(4), § 1.168(k)-1(b)(4)(ii)(A)-(D) and (iv) do not apply, and the taxpayer should make the following substitutions:

(i) Strike the language in § 1.168(k)-1(b)(4)(i)(A)(1) and replace it with the following: “Acquired by the taxpayer before January 1, 2020; or”;

(ii) Strike the language in § 1.168(k)-1(b)(4)(i)(A)(2) and replace it with the following: “Acquired by the taxpayer pursuant to a written contract that was entered into before January 1, 2020.”

(iii) In § 1.168(k)-1(b)(4)(ii)(E), strike the word “binding” and replace it with “written”;

(iv) In § 1.168(k)-1(b)(4)(iii)(A):

(A) Strike the language “after September 10, 2001, and before January 1, 2005” and replace it with “before January 1, 2020”;

(B) Strike the language “written binding contract (as defined in paragraph (b)(4)(ii))” and replace it with “written contract”;

(C) Strike the language “after December 31, 2004” and replace it with “after December 31, 2019”; and

(v) In § 1.168(k)-1(b)(4)(iii)(C)(1):

(A) Strike the language “binding contract (as defined in paragraph (b)(4)(ii))” and replace it with “written contract”;

(B) Strike the sentence preceding the last sentence; and

(C) In the last sentence, strike the language “If a binding contract to acquire the component is entered into after September 10, 2001, for qualified property, or after May 5, 2003, for 50-percent bonus depreciation property, and before January 1, 2005, but the manufacture, construction, or production of the larger self-constructed property does not begin before January 1, 2005” and replace it with the following: “If a written contract to acquire the component is entered into before January 1, 2020, but the manufacture, construction, or production of the larger self-constructed property does not begin before January 1, 2020”.

(vi) In § 1.168(k)-1(b)(4)(iii)(C)(2):

(A) Strike the sentence preceding the last sentence; and

(B) In the last sentence, strike the language “after September 10, 2001, for qualified property, or after May 5, 2003, for 50-percent bonus depreciation property, and before January 1, 2005, but the manufacture, construction, or production of the larger self-constructed property does not begin before January 1, 2005” and replace it with the following: “before January 1, 2020, but the manufacture, construction, or production of the larger self-constructed property does not begin before January 1, 2020”.

(b) Certain aircraft. For aircraft described in § 168(k)(2)(C), the nonrefundable deposit requirement in § 168(k)(2)(C)(iii) is satisfied if the purchaser, at the time of the purchase contract, has made a nonrefundable deposit of at least the lesser of 10 percent of the cost of the aircraft or \$100,000. See section 5.02 of Rev. Proc. 2008-54.

(3) Application of § 1.168(k)-1. For purposes of the additional first year depreciation deduction, rules similar to the rules in § 1.168(k)-1 for “qualified property” or for “30-percent additional first year depreciation deduction” apply to §§ 168(k)(2) and (3). However, in applying § 1.168(k)-1(d)(1)(i), the computation of the allowable 50-percent additional first year depreciation deduction is made in accordance with the rules for 50-percent bonus depreciation property and, in applying § 1.168(k)-1(f)(5)(iii)(A), the rules for 50-percent additional first year depreciation deduction apply. In applying § 1.168(k)-1(c) to qualified improvement property, see section 4.02(3) of this revenue procedure. Further, in applying the rules in § 1.168(k)-1 for “qualified property” or for “30-percent additional first year depreciation deduction,” the taxpayer should make the following substitutions:

(a) In § 1.168(k)-1(b)(2)(i)(A), strike “section 168(k)(2)(B)(i)(II) and 168(k)(4)(C)” and replace it with “section 168(k)(2)(B)(i)(IV)”;

(b) In § 1.168(k)-1(b)(2)(i)(D), substitute “Qualified improvement property” for “Qualified leasehold improvement property”;

(c) Section 1.168(k)-1(b)(2)(ii)(A)(3) does not apply;

(d) Section 1.168(k)-1(b)(4) does not apply, except for property described in § 168(k)(2)(B) or (C) (see section 4.01(2)(a) for further guidance on the application of § 1.168(k)-1(b)(4) to property described in § 168(k)(2)(B) or (C)); and

(e) Change the dates to conform to the new dates in § 168(k) as follows:

(i) In §§ 1.168(k)-1(b)(3)(i), (b)(3)(iii)(A) and (B), and (f)(6)(iii)(B), strike “after September 10, 2001”;

(ii) In §§ 1.168(k)-1(b)(5)(i), (f)(2), and (f)(5)(v)(A), strike “before January 1, 2005” and replace it with “before January 1, 2020” and strike “before January 1, 2006” and replace it with “before January 1, 2021”;

(iii) In § 1.168(k)-1(d)(ii), strike “after September 10, 2001 (for qualified property), or May 5, 2003 (for 50-percent bonus depreciation property), and before January 1, 2005.” and replace it with “before January 1, 2019 (for qualified property eligible for the 40-percent additional first year depreciation deduction), or January 1, 2020 (for qualified property eligible for the 30-percent additional first year depreciation deduction).”;

(iv) In § 1.168(k)-1(f)(5)(i), strike “after September 10, 2001, and before January 1, 2005” and replace it with “before January 1, 2020” and strike “after

September 10, 2001, and before January 1, 2006” and replace it with “before January 1, 2021”;

(v) In § 1.168(k)-1(f)(5)(iii)(A), strike “after May 5, 2003, and before January 1, 2005” and replace it with “before January 1, 2020” and strike “after May 5, 2003, and before January 1, 2006” and replace it with “before January 1, 2021”;

(vi) In § 1.168(k)-1(f)(5)(v), strike “after December 31, 2004” and replace it with “after December 31, 2019” and strike “after December 31, 2005” and replace it with “after December 31, 2020”; and

(vii) In § 1.168(k)-1(f)(6)(iii)(B), strike “January 1, 2005” and replace it with “January 1, 2020”.

.02 Qualified Improvement Property.

(1) In general. Section 168(k)(3) defines the term “qualified improvement property” as meaning any improvement to an interior portion of a building that is nonresidential real property if the improvement is placed in service after the date the building was first placed in service. However, qualified improvement property does not include any improvement attributable to the enlargement of the building, any elevator or escalator, or the internal structural framework of the building.

(2) Building was first placed in service. For purposes of § 168(k)(3), the term “first placed in service” means the first time the building is placed in service by any person. See § 1.168(k)-1(c)(1)(iii). A building is first placed in service when first placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity. See § 1.46-3(d)(1)(ii) and (d)(2).

(3) Application of § 1.168(k)-1(c). The rules in § 1.168(k)-1(c) apply to depreciable property that is qualified improvement property. However, in applying § 1.168(k)-1(c), §§ 1.168(k)-1(c)(2)(iii), (3)(ii), and (3)(vi) do not apply, and the taxpayer should make the following substitutions:

(a) “Qualified improvement property” is substituted for “Qualified leasehold improvement property”;

(b) “qualified improvement property” is substituted for “qualified leasehold improvement property”; and

(c) Strike the language in § 1.168(k)-1(c)(1) after “In general.” and replace it with the following: “For purposes of section 168(k), qualified improvement property means any improvement, which is section 1250 property, to an interior portion of a building that is nonresidential real property if the improvement is placed in service after the date the building was first placed in service by any person.”

(4) Qualified restaurant property. Qualified property that is placed in service by the taxpayer after December 31, 2015, and that meets the definition of both qualified improvement property and qualified restaurant property, as defined in § 168(e)(7), is eligible for the additional first year depreciation deduction under § 168(k), assuming all other requirements in § 168(k) are met.

(5) Examples. The following examples illustrate the provisions of this section 4.02. Assume that all of the improvements in the examples are required to be capitalized under § 263(a) and/or § 263A.

(a) Example 1 – Qualified improvement property. In 2010, A places in service a new office building. In February 2016, A sells this office building to B at fair

market value. B uses the office building in its trade or business. In March 2016, B begins to construct improvements to the interior portion of the office building and places those improvements in service in December 2016. Because the office building was first placed in service in 2010 and the improvements made by B to the interior portion of the office building are placed in service after that date, the improvements that are section 1250 property are qualified improvement property, assuming all other requirements in § 168(k)(3) and § 1.168(k)-1(c), after application of section 4.02(3), are met.

(b) Example 2 – Qualified improvement property. In 2015, C, a corporation and manufacturer, enters into a written binding contract with X for X to construct a new building for use by C in its trade or business. The building will house a manufacturing operation and office space. The initial construction plans did not include a private restroom for the owner of C. During the construction of the building, C enters into a written binding contract with Y to construct a private restroom in the new building for the owner of C. On May 27, 2016, C places in service the building, except for the private restroom. On May 28, 2016, the private restroom in the building for the owner of C is placed in service. Because the building is first placed in service on May 27, 2016, and the private restroom is placed in service on May 28, 2016, the assets in the private restroom that are section 1250 property are qualified improvement property, assuming all other requirements in § 168(k)(3) and § 1.168(k)-1(c), after application of section 4.02(3), are met.

(c) Example 3 – Qualified improvement property. The facts are the same as in Example 2, except C enters into a written binding contract with X, the contractor of the building, to construct a private restroom in the building for the owner of C. Because

the building is first placed in service on May 27, 2016, and the private restroom is placed in service on May 28, 2016, the result is the same as in Example 2.

(d) Example 4 – Qualified improvement property. D is engaged in the commercial building rental business. In March 2015, D enters into a written binding contract with Z to construct a multi-story building. Pursuant to this contract, Z constructs a completely finished exterior of the building and a minimally finished interior of the building with only elevators, heating, ventilation, and air conditioning systems, and concrete floors. In December 2015, D and E entered into a lease agreement providing that E will lease one floor of the new building and E will install on that floor drop ceilings, lighting, plumbing, interior walls, electrical outlets, restrooms, carpeting, and trade fixtures necessary for the operation of E's trade or business (collectively referred to as a build-out). On February 8, 2016, D places in service the new building. On June 4, 2016, E places in service the build-out. Because the building is first placed in service on February 8, 2016, and the build-out is placed in service after that date, the assets of the build-out that are section 1250 property are qualified improvement property, assuming all other requirements in § 168(k)(3) and § 1.168(k)- 1(c), after application of section 4.02(3), are met.

(e) Example 5 -- Qualified restaurant property that is qualified improvement property. In 2016, F constructs and places in service an improvement to a restaurant building and that improvement meets the definition of both qualified restaurant property under § 168(e)(7) and qualified improvement property under § 168(k)(3). Accordingly, the improvement is eligible for the additional first year depreciation deduction provided by § 168(k), assuming all other requirements in § 168(k) are met.

(f) Example 6 – Qualified restaurant property that is not qualified improvement property. In 2016, G constructs and places in service a new restaurant building and that building meets the definition of qualified restaurant property under § 168(e)(7). However, that building is not qualified improvement property under § 168(k)(3). Accordingly, the building is not eligible for any additional first year depreciation deduction provided by § 168(k).

.03 Phase Down of Additional First Year Depreciation Deduction Percentage.

(1) In general. Pursuant to § 168(k)(6), the additional first year depreciation deduction percentage of 50 percent is phased down beginning for qualified property placed in service after December 31, 2017 (after December 31, 2018, for property described in § 168(k)(2)(B) or (C)). The tables below provide the additional first year depreciation deduction percentages for qualified property placed in service by the taxpayer after 2015.

(2) Additional first year depreciation deduction percentages.

(a) The table below provides the additional first year depreciation deduction percentages for qualified property that is not described in § 168(k)(2)(B) or (C):

Placed-in-Service Year	Additional First Year Depreciation Deduction Percentage
2016	50%
2017	50%
2018	40%
2019	30%
After 2019	0%

(b) The table below provides the additional first year depreciation deduction percentages for qualified property that is described in § 168(k)(2)(B) or (C):

Placed-in-Service Year	Acquired, or Acquired Pursuant to a Written Contract Entered Into:	Additional First Year Depreciation Deduction Percentage
2016	Before 2020	50%
2017	Before 2020	50%
2018	Before 2020	50%
2019	Before 2019	40% *
2019	During 2019	30% *
2020	Before 2020	30% **
2020	After 2019	0%
After 2020	Before 2020 or After 2019	0%

* For qualified property described in § 168(k)(2)(B) and placed in service in 2019, the 30% and 40% applies only to the property's unadjusted depreciable basis attributable to the property's manufacture, construction, or production before January 1, 2019. See § 1.168(k)-1(d)(1)(ii). For qualified property described in § 168(k)(2)(C) and placed in service in 2019, the 30% and 40% applies to the property's unadjusted depreciable basis.

** For qualified property described in § 168(k)(2)(B) and placed in service in 2020, the 30% applies only to the property's unadjusted depreciable basis attributable to the property's manufacture, construction, or production before January 1, 2020. See §

1.168(k)-1(d)(1)(ii). For qualified property described in § 168(k)(2)(C) and placed in service in 2020, the 30% applies to the property's unadjusted depreciable basis.

.04 Election Not to Deduct the Additional First Year Depreciation Deduction.

(1) In general. The rules for making the election under § 168(k)(7) not to deduct the additional first year depreciation (the § 168(k)(7) election) are similar to the rules for making such election under § 168(k)(2)(D)(iii) as in effect before the enactment of the PATH Act. As a result, the § 168(k)(7) election applies to all qualified property that is in the same class of property and placed in service in the same taxable year. If the § 168(k)(7) election is made for a class of property that is qualified property placed in service during the taxable year, no additional first year depreciation deduction is allowable for that property and § 168(k)(2)(F) does not apply to that property. However, that property is still qualified property for purposes of § 168(k), assuming all the requirements of § 168(k)(2) are met..

(2) Application of § 1.168(k)-1(e). Rules similar to the rules in § 1.168(k)-1(e) (2), (3), and (5)-(7) apply for purposes of § 168(k)(7). Also, strike the language in § 1.168(k)-1(e)(2)(iv) and replace it with the following: "Qualified improvement property as defined in paragraph (c) of this section, as modified by section 4.02 of Rev. Proc. 2017-XX, and depreciated under section 168."

.05 Special Rules for Certain Plants Bearing Fruits and Nuts.

(1) Section 168(k)(5) election.

(a) In general. The § 168(k)(5) election applies to one or more specified plants, as defined in § 168(k)(5)(B), planted or grafted by the taxpayer during the taxable year for which the § 168(k)(5) election is made. If a taxpayer makes the §

168(k)(5) election for a specified plant, (i) the additional first year depreciation deduction provided by § 168(k) is allowed for that specified plant for regular tax and alternative minimum tax purposes for the taxable year in which the specified plant is planted or grafted by the taxpayer, (ii) that specified plant is not treated as qualified property under § 168(k) in its placed-in-service year, and (iii) the depreciation deductions under § 168 for that specified plant, after deducting the additional first year depreciation, are allowed for its placed-in-service year and subsequent taxable years. Further, pursuant to § 263A(c)(7) (as added to the Code by § 143(b)(6)(H) of the PATH Act), § 263A does not apply to any amount deducted under the § 168(k)(5) election.

(b) Time and manner for making the § 168(k)(5) election.

(i) In general. Except as provided in section 4.05(1)(b)(ii), the § 168(k)(5) election must be made by the due date, including extensions, of the Federal tax return for the taxable year in which the taxpayer plants or grafts the specified plant to which the election applies. The § 168(k)(5) election must be made by attaching a statement to the taxpayer's timely filed Federal tax return for that taxable year indicating that the taxpayer is electing to apply § 168(k) and identifying the specified plant(s) for which the taxpayer is making the election.

(ii) Deemed election. This section 4.05(1)(b)(ii) applies to a taxpayer that did not make the § 168(k)(5) election for a specified plant planted or grafted by the taxpayer after December 31, 2015, on its timely filed Federal tax return for its taxable year beginning in 2015 and ending in 2016 or its taxable year of less than 12 months beginning and ending in 2016. If this section 4.05(1)(b)(ii) applies, the taxpayer will be treated as making the § 168(k)(5) election for that specified plant if the taxpayer:

(A) On that return, deducted the 50-percent additional first year depreciation for that specified plant; and

(B) Did not revoke the deemed election provided under this section 4.05(1)(b)(ii) within the time and manner provided in section 4.05(2)(b).

(2) Revocation of the § 168(k)(5) election.

(a) In general. Except as provided in section 4.05(2)(b), the § 168(k)(5) election, once made, may be revoked only with the written consent of the Commissioner. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling pursuant to Rev. Proc. 2017-1, 2017-1 I.R.B. **XX** (or successor).

(b) Automatic 6-month extension. If a taxpayer made the § 168(k)(5) election for a specified plant, an automatic extension of 6 months from the due date, excluding extensions, of the taxpayer's Federal tax return for the taxable year in which such specified plant is planted or grafted is granted to revoke that election, provided the taxpayer timely filed the taxpayer's Federal tax return for that taxable year and, within this 6-month extension period, the taxpayer, and all taxpayers whose tax liability would be affected by the § 168(k)(5) election, files an amended Federal tax return for that taxable year in a manner that is consistent with the revocation of the election.

(3) Interaction with § 179. If a taxpayer makes the § 168(k)(5) election for a specified plant, the adjusted basis of that specified plant is reduced by the amount of the additional first year depreciation deduction allowed or allowable under § 168(k), whichever is greater. This remaining adjusted basis is the cost of the specified plant for purposes of § 179, before the application of §§ 179(d)(3) and 1.179-4(d).

SECTION 5. ELECTION NOT TO APPLY § 168(j)

.01 In General. The § 168(j)(8) election applies to all qualified Indian reservation property, as defined in § 168(j)(4), that is in the same class of property and placed in service in the same taxable year. If the § 168(j)(8) election is made for a class of property that is qualified Indian reservation property placed in service during the taxable year, the applicable recovery period for that property for purposes of § 168(a) is determined in accordance with the table contained in § 168(c) and the depreciation adjustments under § 56 and the regulations under § 56 apply to that property for purposes of computing the taxpayer's alternative minimum taxable income. Once made, the § 168(j)(8) election is irrevocable.

.02 Definition of Class of Property. For purposes of § 168(j)(8) and this section 5, the term "class of property" means each class of property described in the table contained in § 168(j)(2) (for example, 3-year property).

.03 Time and Manner for Making the § 168(j)(8) Election.

(1) In general. Except as provided in section 5.03(2), the § 168(j)(8) election must be made by the due date, including extensions, of the Federal tax return for the taxable year in which the taxpayer places in service the qualified Indian reservation property. The § 168(j)(8) election must be made by attaching a statement to the taxpayer's timely filed Federal tax return for that taxable year indicating that the taxpayer is electing not to apply § 168(j) and the class(es) of property for which the taxpayer is making the election.

(2) Deemed election. This section 5.03(2) applies to a taxpayer that did not make the § 168(j)(8) election within the time and in the manner provided in section

3.03(1) for a class of property that is qualified Indian reservation property placed in service by the taxpayer in its taxable year of less than 12 months beginning and ending in 2016. If this section 3.03(2) applies, the taxpayer will be treated as making the § 168(j) election for a class of property that is qualified Indian reservation property if the taxpayer, on its timely filed Federal tax return for that taxable year, determined depreciation for that class of property under the general depreciation system of § 168(a) by using the applicable recovery period for that class of property in accordance with the table contained in § 168(c).

SECTION 6. EFFECT ON OTHER DOCUMENTS

Section 6 of Rev. Proc. 2008-54 is obsoleted for taxable years beginning after 2014.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective **[INSERT RELEASE DATE]**.

SECTION 8. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-**[INSERT #]**.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 4.05 and 5.03. This information is required to make the elections provided under §§ 168(j)(8) and 168(k)(5). This information will be used to verify that the taxpayer is determining

depreciation properly for the assets for which the elections are made. The collections of information are required to obtain a benefit. The likely respondents are individuals, farms, business or other for-profit organizations, and small businesses.

The estimated total annual reporting and/or recordkeeping burden is 48,750 hours.

The estimated annual burden per respondent/recordkeeper varies from .25 hours to 1 hour, depending on individual circumstances, with an estimated average of .75 hours. The estimated number of respondents and/or recordkeepers is 65,000.

The estimated frequency of responses (used for reporting requirements only) is annually.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax information are confidential, as required by 26 U.S.C. 6103.

SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Elizabeth Binder of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Ms. Binder at (202) 317-7005 (not a toll-free call).