The Tax Cuts and Jobs Act (P.L. 115-97) as signed by President Trump on December 22, 2017. Numerous provisions discussed below affect depreciation.

Code Sec. 179

Effective for tax years beginning after December 31, 2017, the 2017 Tax Cuts Act:

- Increases dollar limit to $1 million and investment limit to $2.5 million
- Allows expensing of "qualified improvement property" (i.e. internal improvements to nonresidential real property) and, also, roofs, HVACs, fire protection and alarms, and security systems for nonresidential real property
- Allows expensing for property used in connection with lodging (e.g., in connection with residential rental property)
- Adjusts $25,000 expensing limit on certain heavy vehicles for inflation

Bonus Depreciation

Effective for property acquired after September 27, 2017 and placed in service after that date:

- The bonus depreciation rate is increased to 100 percent but phases down 20 percent each year beginning in 2023
- A taxpayer may elect to apply the 50 percent rate for property placed in service during the taxpayer's first tax year ending after September 27, 2017.
- Used property qualifies for bonus depreciation
- Films, television shows, and theatrical productions are eligible for bonus depreciation
- Property used by rate-regulated utilities and property is excluded from bonus depreciation
- Property of certain motor vehicle, boat, and farm machinery retail and lease businesses that use floor financing indebtedness is excluded from bonus depreciation
- Corporate election to claim AMT credits in lieu of bonus depreciation is repealed
- Long-term accounting method relief from impact of bonus depreciation extended

Annual Depreciation Caps for Passenger Automobiles

- Annual caps are significantly increased in 2018
- IRS safe harbor needed to allow depreciation after first year if 100 percent bonus claimed

Depreciation of Real Property

Effective for property placed in service after December 31, 2017:

- qualified improvement property is assigned a 15-year recovery period if a technical correction is enacted

- the property classes for 15-year leasehold improvement property, retail improvement property, and restaurant improvements and buildings are eliminated
- ADS recovery period for residential rental property is reduced from 40 years to 30 years
- ADS must be used by an electing real property trade or business to depreciate residential rental property, nonresidential real property, and qualified improvement property (effective for tax years beginning after December 31, 2017)

DEPRECIATION OF FARM PROPERTY

Effective for property placed in service after 2017, modifications to the treatment of certain farm equipment include:

- a decrease in the 7-year recovery period for new farming machinery and equipment to 5 years
- elimination of the rule requiring use of the 150-percent-declining balance method on property used in a farming business
- farming business electing out of interest deduction limitation must use ADS for property with recovery period of 10 years or greater.

Computers and Peripheral Equipment Removed from Listed Property Status

- Effective for property placed in service after December 31, 2017, computers and peripheral equipment are removed as a category of listed property

CODE SEC. 179

The 2017 Tax Cuts Act:

- Increases dollar limit to $1 million and investment limit to $2.5 million
- Allows expensing of "qualified improvement property" (i.e. internal improvements to nonresidential real property) and, also, roofs, HVACs, fire protection and alarms, and security systems for nonresidential real property
- Allows expensing for property used in connection with lodging (e.g., in connection with residential rental property)
- Adjusts $25,000 expensing limit on certain heavy vehicles for inflation

Dollar and Investment Limits Increased. The overall Code Sec. 179 expensing dollar limitation is increased from $500,000 (inflation-adjusted to $510,000 for 2017) to $1 million, and the investment limitation is increased from $2 million (inflation-adjusted to $2,030,000 in

2017) to $2.5 million, effective for property placed in service in tax years beginning after December 31, 2017 (Code Sec. 179(b)(1) and (2), as amended by the Tax Cuts and Jobs Act (P.L. 115-97)).

These increases are permanent and will be inflation-adjusted for tax years beginning after 2018 (Code Sec. 179(b)(6), as amended by the 2017 Tax Cuts Act). The amount of the inflation adjustment is based on the cost-of-living adjustment determined under Code Sec. 1(f)(3) for the calendar year in which the tax year begins, by substituting calendar year 2017 for calendar year 2016. When adjusting the dollar limitation or the investment limitation for inflation, the resulting amount must be rounded to the nearest multiple of $10,000.

Qualified real property definition expanded. The definition of qualified real property that taxpayers may elect to treat as section 179 is significantly expanded. Effective for tax years beginning after 2017, qualified real property is defined as (Code Sec. 179(f), as amended by the 2017 Tax Cuts Act):

(1) Qualified improvement property; and
(2) Any of the following improvements to nonresidential real property that are placed in service after the nonresidential real property is placed in service:

- roofs;
- heating, ventilation, and air-conditioning property;
- fire protection and alarm systems; and
- security systems

Comment

As under prior law, a taxpayer must elect to treat qualified real property as section 179 property (Code Sec. 179(d)(1)(B)(ii), as amended by the 2017 Tax Cuts Act). If the election is made and the total cost of all section 179 property, including qualified real property, exceeds the investment limitation ($2.5 million in 2018) the dollar limitation ($1 million in 2018) is subject to reduction.

Qualified improvement property is an improvement to *an interior portion* of a building that is nonresidential real property provided the improvement is placed in service after the date that the building is placed in service. However, improvements related to the enlargement of the building, an elevator or escalator, or the internal structural framework of the building are not qualified improvement property (Code Sec. 168(e), as amended by the 2017 Tax Cuts Act.

Comment

Previously, qualified real property eligible for expensing consisted of qualified leasehold improvement property, qualified retail improvement property, and qualified restaurant improvements and buildings that are eligible for an MACRS 15-year recovery period. Qualified leasehold improvement property is any improvement to the interior portion of a building that is not residential rental property and is made under or pursuant to the terms of a lease by the lessor or lessee. Qualified retail improvement property is any improvement to the interior portion of a building that is not residential rental property, which is open to the general public, and is used in the retail trade or business of selling tangible personal property to the general public. The improvement to leasehold or retail improvement property must be placed in service more than 3 years after the date the building is first placed in service by any person and improvements related to the enlargement of the building, any elevator or escalator, any structural component benefitting a common area, or the internal structural framework of the building do not qualify. Qualified restaurant property is a restaurant building or any improvement to a restaurant building. No additional restrictions apply to restaurant property.

Comment

Qualified improvement property became a category of property eligible for bonus depreciation for property placed in service after 2015 (Code Sec. 168(k)(3), as added by Division Q of P.L. 114-113 (PATH Act), December 18, 2015). The new law does not change the definition of qualified improvement property but now includes it as a category of property eligible for expensing under section 179 as "qualified real property." Under the new law, qualified real property also includes roofs, HVAC property, fire protection or alarm systems, and security systems placed in service in or on a commercial building after the building is placed in service. Under prior law, qualified real property included only 15-year leasehold improvement property, 15-year retail improvement, and 15-year restaurant improvements and buildings.

Comment

A separate provision eliminates the 15-year recovery period for 15-year leasehold improvement property, 15-year retail improvement, and 15-year restaurant improvements and buildings effective for property placed in service after 2017 (Code Sec. 168(e)(3)(E), as amended by the 2017 Tax Cuts Act). In its place, Congress intended to assign a 15-year recovery period for qualified improvement property (Conference Report on H.R. 1, Tax Cuts and Jobs Act (H. Rept. 115-466)). However, the final bill text, while eliminating the 15-year classifications for leasehold improvement property, etc., inadvertently failed to assign a 15-year recovery period to qualified improvement property. A technical correction will be necessary.

Comment

The new section 179 provision is unfavorable to restaurant owners. Previously, restaurant buildings and improvements to the exterior as well as the interior of a restaurant building qualified for expensing under the qualified real property category. Under the new law, a restaurant improvement (or improvement to any other type of building) must meet the definition of "qualified improvement property." This means that only internal improvements to a restaurant building (and also roofs, HVAC property, fire protection and alarm systems, and security systems) will qualify for expensing. Furthermore, because restaurant buildings are not "qualified improvement property" they cannot be depreciated over the intended 15-year recovery period for qualified improvement property or expensed under section 179 as qualified improvement property.

Exclusion for property used in connection with lodging repealed. Effective for property placed in service in tax years beginning after December 31, 2017, property that is used predominantly to furnish lodging or in connection with the furnishing of lodging qualifies for expensing under section 179 (Code Sec. 179(d)(1), as amended by the 2017 Tax Cuts Act).

Comment

The primary impact is to allow expensing of section 1245 property purchased for use in connection with a residential rental building.

$25,000 limit on certain vehicles adjusted for inflation. The $25,000 maximum Code Sec. 179 deduction that may be claimed on specified vehicles that are exempt from the luxury car caps will be adjusted for inflation in tax years beginning after 2018 (Code Sec. 179(b)(6), as amended by the 2017 Tax Cuts Act).

Comment

The $25,000 limit applies to a sport utility vehicle, a truck with an interior cargo bed length less than six feet, or a van that seats fewer than 10 persons behind the driver's seat if the vehicle is exempt from the Code Sec. 280F annual depreciation caps because it has a gross vehicle weight rating in excess of 6,000 pounds or is otherwise exempt (Code Sec. 179(b)(5)).

The amount of the inflation adjustment is based on the cost-of-living adjustment determined under Code Sec. 1(f)(3) for the calendar year in which the tax year begins, but substituting calendar year 2017 for calendar year 2016. When adjusting the $25,000 limit for inflation, the resulting amount must be rounded to the nearest multiple of $100.

BONUS DEPRECIATION

Effective for property acquired after September 27, 2017 and placed in service after September 27, 2017.

- The bonus depreciation rate is increased to 100 percent for property acquired and placed in service after September 27, 2017 and before January 1, 2023. The rate phases down 20 percent per year thereafter
- A taxpayer may elect to apply the 50 percent rate for property placed in service during the taxpayer's first tax year ending after September 27, 2017.
- Used property qualifies for bonus depreciation
- Films, television shows, and theatrical productions are eligible for bonus depreciation
- Property used by rate-regulated utilities and property is excluded from bonus depreciation

- Property of certain motor vehicle, boat, and farm machinery retail and lease businesses that use floor financing indebtedness is excluded from bonus depreciation
- Corporate election to claim AMT credits in lieu of bonus depreciation is repealed
- Long-term accounting method relief from impact of bonus depreciation extended

Bonus depreciation extended and increased to 100 percent; additional modifications made. For qualified property acquired after September 27, 2017, the 50 percent bonus depreciation rate is increased to 100 percent and phased-out as follows:

- 100 percent for property placed in service after September 27, 2017 and before January 1, 2023
- 80 percent for property placed in service after December 31, 2022 and before January 1, 2024
- 60 percent for property placed in service after December 31, 2023 and before January 1, 2025
- 40 percent for property placed in service after December 31, 2024 and before January 1, 2026
- 20 percent for property placed in service after December 31, 2025 and before January 1, 2027
- 0 percent (bonus expires) for property placed in service after December 31, 2026 (Code Sec. 168(k)(6)(A), as amended by the Tax Cuts and Jobs Act (P.L. 115-97)).

Property acquired before September 28, 2017. Property acquired before September 28, 2017 is subject to the 50 percent rate if placed in service in 2017, a 40 percent rate if placed in service in 2018, and a 30 percent rate if placed in service in 2019. Property acquired before September 28, 2017 and placed in service after 2019 is not eligible for bonus depreciation. In the case of longer production property (LPP) and non-commercial aircraft (NCA) these placed-in-service dates are extended one year (Code Sec. 168(k)(8), as added by the 2017 Tax Cuts Act). These are the rules that applied before enactment of the 2017 Tax Cuts Act. They continue to apply to property acquired before the September 28, 2017 cut-off date set by Congress.

If a written binding contract for the acquisition of property is in effect prior to September 28, 2017, the property is not considered acquired after the date the contract is entered into (Act Sec. 13201(h)(1) of the 2017 Tax Cuts Act). Consequently, property subject to a binding written contract entered into before September 28, 2017 is not eligible for the 100 percent rate and is subject to a 40 percent rate if placed in service in 2018 and a 30 percent rate if placed in service in 2019. The 50 percent rate applies if such property is placed in service in 2017.

Comment

Prior to the enactment of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) on December 18, 2015, property acquired before January 1, 2008 (or pursuant to a written binding contract entered into before January 1, 2008) was not eligible for bonus depreciation and property acquired before September 8, 2010 (or pursuant to a written binding contract entered into before September 8, 2010) was not eligible for the 100 percent bonus depreciation rate that applied to property placed in service after September 7, 2010 and before January 1, 2012 (before January 1, 2013 for LLP and NCA). With the passage of time, the acquisition date and binding contract requirements became irrelevant and were stricken by the PATH Act, effective for property placed in service after December 31, 2015. Now that an acquisition date requirement is reinstated for purposes of determining whether a 50 percent or 100 percent rate will apply, various issues revolving around the definition of an "acquisition" are back in play. The acquisition date requirements in the context of the 100 percent bonus depreciation rate for property acquired after September 7, 2010 were specifically addressed in Rev. Proc. 2011-26. The IRS will presumably issue similar guidance in the future for purposes of determining whether property is considered acquired after September 27, 2017 and eligible for the 100 percent rate. See also Reg. §1.168(k)-1(b)(4) for rules regarding the determination of acquisition dates.

Specified plants. The applicable rates above also apply to specified plants acquired after September 27, 2017, except that the date the specified plant was planted or grafted replaces the placed in service date (Code Sec. 168(k)(6)(C), as amended by the 2017 Tax Cuts Act). In general, a specified plant is any tree or vine which bears fruits or nuts, and any other plant which will have more than one yield of fruits or nuts and which generally has a pre-productive period of more than 2 years from the time of planting or grafting to the time at which such plant begins bearing fruits or nuts (Code Sec. 168(k)(5)).

Property with longer production period and non-commercial aircraft. In the case of property with a longer production period (LPP) and non-commercial aircraft (NCA), the placed-in-service deadlines for property acquired after September 27, 2017 are extended for one year as follows:

- 100 percent for property placed in service after September 27, 2017 and before January 1, 2024
- 80 percent for property placed in service after December 31, 2023 and before January 1, 2025
- 60 percent for property placed in service after December 31, 2024 and before January 1, 2026
- 40 percent for property placed in service after December 31, 2025 and before January 1, 2027
- 20 percent for property placed in service after December 31, 2026 and before January 1, 2028
- 0 percent (bonus expires) for property placed in service after December 31, 2027 (Code Sec. 168(k)(6)(B), as amended by the 2017 Tax Cuts Act).

2027 production expenditures for LPP do not qualify for bonus depreciation (Code Sec. 168(k)(2)(B)(ii), as amended by the 2017 Tax Cuts Act). This rule does not apply to non-commercial aircraft (NCA).

Election to apply 50 percent rate. A taxpayer may elect to apply the 50 percent rate instead of the 100 percent rate for property placed in service during the taxpayer's first tax year ending after September 27, 2017. The time and manner of making the election will be provided by the

IRS (Code Sec. 168(k)(8), as added by the 2017 Tax Cuts Act). For example, a calendar year taxpayer making this election can apply the 50 percent rate to all qualified property placed in service in 2017 and ignore the 100 percent rate that would otherwise apply to qualified property acquired and placed in service after September 27, 2017 and before January 1, 2018.

Comment

When Congress last increased the bonus rate from 50 percent to 100 percent, the IRS provided a similar election to use the 50 percent rate on a property class basis (Rev. Proc. 2011-26). For example, the election could be made to apply to all 5-year property only. Presumably, the IRS will again provide a similar rule

Caution

The explanation below for qualified improvement property assumes that qualified improvement property placed in service after December 31, 2017 will have a 15-year recovery period as intended by Congress.

The original Senate bill would have provided a 10-year recovery period for qualified improvement property. The House bill contained no provision. The final bill, according to the Conference Report on H.R. 1, Tax Cuts and Jobs Act (H. Rept. 115-466) sets a 15-year recovery period for qualified improvement property. However, the text of the final bill omits the provision which would have given a 15-year recovery period for qualified improvement property. A technical correction will be needed to create a 15-year recovery period for qualified improvement property and all such property in the absence of such a correction will be treated as 39-year nonresidential real property, effective for property placed in service after December 31, 2017 (no acquisition date requirement applies).

An unintended consequence of failing to provide a 15-year recovery period for qualified improvement property placed in service after December 31, 2017, is that such property will not qualify for bonus depreciation if placed in service after that date. As explained below, qualified improvement property was removed as a specific category of bonus depreciation property, effective for property placed in service after December 31, 2017 (Code Sec. 168(k)(3), as stricken by the 2017 Tax Cuts Act) on the assumption that all qualified improvement property would have a 15-year recovery period and, therefore, qualify for bonus depreciation under the general rule that allows MACRS property with a recovery period of 20 years or less qualify for bonus depreciation.

Qualified improvement property. Qualified improvement property is removed as a specifically named category of property eligible for bonus depreciation, effective for property placed in service after December 31, 2017 (this provision applies without regard to the acquisition date) (Code Sec. 168(k)(2)(A)(IV) and Code Sec. 168(k)(3), stricken by the 2017 Tax Cuts and Jobs Act). However, all qualified improvement property remains eligible for bonus depreciation (assuming the correction described in the "Caution" note above is made).

It was previously necessary to list qualified improvement property as a separate category of property eligible for bonus depreciation because some types of improvements which met the definition of qualified improvement property had a recovery period of 39 years. Therefore, this 39-year qualified improvement property would not have been eligible for bonus depreciation without the separate category for qualified improvement property because bonus depreciation generally otherwise only applies to property with an MACRS recovery period of 20 years or less (Code Sec. 168(k)(2)(A)(i))). The 2017 Tax Cuts and Jobs Act, however, provides a standard 15-year recovery period for all qualified improvement property (assuming the correction discussed above is made) placed in service December 31, 2017. This means qualified improvement property will qualify for bonus depreciation because it has a recovery period of 20 years or less.

Comment

The new law does not change the definition of qualified improvement property. It simply assigns a 15-year recovery period and straight-line method to such property (assuming the correction in the discussion above is made). Qualified improvement property is defined as an improvement to the interior of nonresidential real property but does not include improvements for expenditures attributable to the enlargement of a building, elevator or escalator, or the internal structural framework of a building (Code Sec. 168(e)(6), as added by the 2017 Tax Cuts and Jobs Act). The new law eliminates the categories of 15-year qualified leasehold improvement property, 15-year qualified retail improvement property, and 15-year restaurant property, effective for property placed in service after December 31, 2017. A 15-year recovery period (and bonus depreciation) will apply to this type of property when placed in service after December 31, 2017 only if the definitional requirements of 15-year qualified improvement property are satisfied.

Example

A calendar-year taxpayer makes an improvement to the interior of an office building in June 2016. Assume the improvement is depreciable over 39 years as non-residential real property because it does not satisfy the definition of 15-year qualified leasehold improvement, 15-year retail improvement, or 15-year restaurant property. Even though the improvement has a 39-year recovery period is may qualify for bonus depreciation because for property placed in service in 2017 qualified improvement property is listed as a separate category of property eligible for bonus depreciation. If the same improvement is made in 2018, the recovery period of the improvement is 15 years and the improvement may qualify as bonus depreciation under the bonus depreciation category for MACRS property with a recovery period of 20 years or less.

Exclusion for property of rate-regulated utility. Under a new provision, rate-regulated utilities are preventing from claiming bonus depreciation, effective for property acquired and placed in service after September 27, 2017 (Code Secs. 168(k)(d)(9) and 163(j)(7)(A)(iv), as added by the 2017 Tax Cuts Act). Specifically, property does not qualify for bonus depreciation if it is primarily used in a trade or business of furnishing or selling for regulated rates:

- electrical energy or water,
- sewage disposal services,
- gas or steam through a local distribution system, or

- transportation of gas or steam by pipeline.

Rates are regulated if established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, by a public service or public utility commission or other similar body of any State or political subdivision thereof, or by the governing or ratemaking body of an electric cooperative.

Exclusion for property used by certain motor vehicle, boat, farm machinery businesses that used floor financing indebtedness. Property used in a trade or business that has had floor plan financing indebtedness does not qualify for bonus depreciation if the floor plan financing interest on the indebtedness was taken into account under the new rules that limit the business interest deduction to 30 percent of adjusted taxable income plus floor plan financing interest and interest income (Code Sec. 168(k)(9)(B) and Code Sec. 163(j), as added by the 2017 Tax Cuts Act). Floor plan financing indebtedness means indebtedness:

- used to finance the acquisition of motor vehicles held for sale or lease; and
- secured by the inventory acquired (Code Sec. 168(j)(3)(9), as added by the 2017 Tax Cuts Act).

A motor vehicle means:

- Any self-propelled vehicle designed for transporting persons or property on a public street, highway, or road;
- A boat; or
- Farm machinery or equipment.

Comment

The interest deduction limitation does not apply in any tax year that a taxpayer meets the gross receipts test of Code Sec. 448(c) by having average annual gross receipts for the three-taxable year period ending with the prior tax year that do not exceed $25 million (Code Sec. 163(j)(3), as added by the 2017 Tax Cuts Act). However, if a taxpayer has floor financing interest in any tax year that it is not exempt from the 30 percent deduction limitation by reason of the gross receipts test or otherwise, the exclusion from bonus depreciation continues to apply in tax years that it is exempt.

Used property qualifies for bonus depreciation. Effective for property acquired and placed in service after September 27, 2017, property previously used by an unrelated taxpayer may qualify for bonus depreciation if it meets “acquisition requirements” (Code Sec. 168(k)(2)(A)(ii)). The acquisition requirements are met if (Code Sec. 168(k)(2)(E)(ii), as amended by the 2017 Tax Cuts Act):

- the taxpayer did not use the property at any time before acquiring it; and
- the taxpayer acquired the property by “purchase” within the meaning of Code Sec. 179(d)(2) (Code Sec. 168(k)(2)(E)(ii), as amended by the 2017 Tax Cuts Act).

Under Code Sec. 179(d)(2), any acquisition is considered a purchase unless the property:

- is acquired from a person whose relationship to the taxpayer would bar recognition of a loss in any transaction between them under Code Sec. 267 (with the taxpayer's family limited to spouse, ancestors and lineal descendants) or Code Sec. 707(b);
- is acquired by one member of a controlled group of corporations from another member (substituting 50 percent for the 80 percent that would otherwise apply with respect to stock ownership requirements);
- has a basis in the hands of the acquiring taxpayer determined in whole or in part by reference to the adjusted basis of the person from who the property was acquired (e.g., a gift or section 1022 basis property); or
- has a basis determined under Code Sec. 1014(a) relating to inherited or bequested property (Reg. §1.179-4(c)).

Used property received in carryover basis transactions. The acquisition is also subject to the requirements of Code Sec. 179(d)(3) (Code Sec. 168(k)(2)(E)(ii)(II), as added by the 2017 Tax Cuts Act). Code Sec. 179(d)(3) (see also Reg. §1.179-4(d)), provides that the cost of property eligible for section 179 expensing does not include basis of property that is determined by reference to the basis of other property held at any time by the person acquiring the property (e.g., the carryover basis in a like-kind exchange does not qualify for expensing but any additional cash paid does) (Conference Report on H.R. 1, Tax Cuts and Jobs Act (H. Rept. 115-466).

Comment

According to the Conference Report on H.R. 1, Tax Cuts and Jobs Act (H. Rept. 115-466), the reference to Code Sec. 179(d)(3) means that in the case of trade-ins, like-kind exchanges, or involuntary conversions, bonus depreciation only applies to any money paid in addition to the trade-in property or in excess of the adjusted basis of the replaced property. This limitation should only apply when the replacement property is used property. Bonus depreciation regulations currently in effect provide that bonus depreciation may be claimed on the carryover and excess basis of property acquired in a like-kind exchange if the property received in the exchange meets all other qualification requirements, including the original use requirement (Reg. §1.168(k)-1(f)(5)).

Rule for sale-leasebacks eliminated. Since the original use requirement is now supplemented with the rule above allowing used property to qualify for bonus depreciation, a special rule for sale-leasebacks in Code Sec. 168(k)(2)(E)(ii), prior to amendment by the 2017 Tax Cuts Act, is stricken.

Comment

The eliminated rule provides an exception to the requirement that original use must begin with the taxpayer in a sale-leaseback. The rule applies to new property that was originally placed in service after December 31, 2007 by a person who sells it to the taxpayer and then leases it from the taxpayer within three months after the date that the property was originally placed in service.

In this situation, the property is treated as originally placed in service by the taxpayer-lessor and the taxpayer-lessor's placed-in-service date is deemed to occur no earlier than the date that the property is used by the lessee under the leaseback.

Bonus allowed for film and television productions and live theatrical productions. Bonus depreciation is allowed for a qualified film, television show, or theatrical production placed in service after September 27, 2017 if it would have qualified for the Code Sec. 181 expense election without regard to the $15 million expensing limit or the December 31, 2016 expiration date (Code Sec. 168(k)(2)(A)(i), as amended by the 2017 Tax Cuts Act). A qualified film or television production is placed in service at the time of its initial release or broadcast. A qualified live theatrical production is placed in service at the time of its initial live-staged performance (Code Sec. 168(k)(2)(H), as added by the 2017 Tax Cuts Act).

Comment

Property acquired before September 28, 2017 does not qualify for bonus depreciation at the 100 percent rate (Act Sec. 13201(h)(1) of the 2017 Tax Cuts Act). If a film, television show, or theatrical production is deemed acquired before that date, bonus depreciation may not be claimed since it would not be qualified property. A 50 percent rate, however, would apply to other types of qualified property acquired before September 28, 2017. The IRS may need to provide guidance on how the acquisition requirement applies to films, television shows, and theatrical productions. One possibility is that the acquisition date for this purpose may be deemed to occur, at least in the case of a film or television show, when the production "commences," as defined below. Another possibility is to adapt the generally applicable rule for tangible property produced by or for a taxpayer that treats acquisition as occurring when physical work of a significant nature begins (Reg. §1.168(k)-1(b)(4)(iii)(B)).

Comment

The Code Sec. 181 deduction expired effective for productions commencing after December 31, 2016 (Code Sec. 181(g)) and was not extended by the new law. In the case of a film or television show a production commences on the date of first principal photography. A theatrical production commences on the date of the first public performance before a paying audience. If a section 181 election is made production costs are expensed in the tax year paid or incurred. If the production does not commence until after the December 31, 2016 expiration date, costs expensed under section 181 are subject to recapture. Under the bonus depreciation rule, production costs will now be expensed in the tax year the production is placed in service and without regard to the $15 million limit.

Comment

A taxpayer generally makes an election under Code Sec. 181 on the income tax return for the tax year in which production costs are first paid or incurred (Reg. §1.181-2(b)) and not at the later time when the production is placed in service, as defined above for bonus depreciation purposes. A taxpayer that made a Code Sec. 181 election at the time a production commenced is prohibited from claiming bonus depreciation on the same production if it is placed in service after

September 27, 2017 unless the IRS grants permission to revoke the section 181 election (Code Sec. 181(b) and (c)). Automatic consent, however, will be granted without filing a letter ruling request if the taxpayer recaptures previously claimed deductions under section 181 (Reg. §181-2(d)(2)).

Coordination with passenger automobile depreciation caps. The first-year depreciation cap on a passenger vehicle that is subject to the annual depreciation limitations of Code Sec. 280F because its gross vehicle rate rating does not exceed 6,000 pounds is increased by $8,000 if 100 bonus depreciation is claimed. This is the same increase that applies when bonus depreciation is claimed at a 50 percent rate. The scheduled decrease in the $8,000 bump-up to $6,400 in 2018 and $4,800 in 2019 to reflect the formerly scheduled decreases in the bonus rate from 50 percent to 40 percent in 2018 and to 30 percent in 2019 will only apply to vehicles acquired before September 28, 2017 and placed in service after September 27, 2017 (Code Sec. 168(k)(2)(F)(iii), stricken by the 2017 Tax Cuts Act).

Comment

The annual depreciation caps are substantially increased by the new law (Code Sec. 280F(a), as amended by the 2017 Tax Cuts Act). In addition, for taxpayers that claims 100 percent bonus on a vehicle subject to the caps, the IRS will likely need to issue a safe harbor similar to one that was previously issued when a 100 percent bonus rate applied, that will allow such taxpayers to claim depreciation deductions after the first-year a vehicle is placed in service.

Long-term accounting method relief. In determining the percentage of completion under Code Sec. 460(b)(1)(A) for purposes of the long-term contract method of accounting, the cost of property with a MACRS recovery period of 7 years or less that qualifies for bonus depreciation is taken into account as a cost allocated to the contract as if the bonus depreciation had not been enacted. The provision applies only to property placed in service (1) after December 31, 2009 and before January 1, 2011 (before January 1, 2012 in the case of property with a longer production period) and (2) after December 31, 2012, and before January 1, 2027 (before January 1, 2028, in the case of long production property) (Code Sec. 460(c)(6)(B), as amended by the 2017 Tax Cuts Act).

Comment

With the exception of transportation property, property with a longer production period must have a recovery period of 10 years or greater. Thus, longer production property that is not transportation property does not qualify for the special treatment provided by this provision. Transportation property is tangible personal property used in the trade or business of transporting persons or property, such as an airliner, and is not subject to the rule that requires a MACRS depreciation period of 10 years or greater in order to constitute long-production property (Code Sec. 168(k)(2)(B)(iii)).

Corporate election to claim unused AMT credits in lieu of bonus depreciation. The annual election provided to corporations to claim unused alternative minimum tax (AMT) credits in place of bonus depreciation on property placed in service during the tax year of the election is stricken effective for tax years beginning after December 31, 2017 (Code Sec. 168(k)(4), stricken by the 2017 Tax Cuts Act).

Comment

The corporate AMT is repealed, effective for tax years beginning after December 31, 2017.

Effective date. The provisions generally apply to property which is acquired after September 27, 2017, and is placed in service after September 27, 2017. For this purpose, property shall not be treated as acquired after the date on which a written binding contract is entered into for such acquisition (Act Sec. 13201(h)(1) of the Tax Cuts and Jobs Act (P.L. 115-97)). The amendments related to specified plants apply to specified plants planted or grafted after September 27, 2017 (Act. Sec. 13201(h)(2) of the 2017 Tax Cuts Act).

ANNUAL DEPRECIATION CAPS FOR PASSENGER AUTOMOBILES

- **Annual caps are significantly increased in 2018**
- **IRS Safe Harbor needed to allow depreciation after first year if 100 percent bonus claimed**

Depreciation caps for passenger automobiles increased. The annual depreciation caps are increased, effective for vehicles placed in service after December 31, 2017. The increased caps that apply to vehicles placed in service in 2018 are (Code Sec. 280AF(a)(1), as amended by the Tax Cuts and Jobs Act (P.L. 115-97)):

- Tax Year 1...............$10,000 ($18,000 if bonus depreciation claimed)
- Tax Year 2...............$16,000
- Tax Year 3...............$ 9,600
- Tax Years 4 -6.........$ 5,760

Any unrecovered basis remaining at the end of the regular recovery period of a vehicle is recovered at the rate of $5,760 per tax year.

Comment

The recovery period of a vehicle is 5 years. However, the 5-year recovery period covers 6 tax years because under the MACRS half-year or mid-quarter convention a full year’s depreciation is not allowed in the tax year that the vehicle is placed in service.

These caps are adjusted annually for inflation effective for vehicles placed in service after 2018 (Code Sec. 280F(d), as amended by the 2017 Tax Cuts Act). The $8,000 bump-up to the first-year cap if bonus depreciation is claimed is not adjusted for inflation.

Comment

For vehicles placed in service in 2018, the preceding caps will apply to all types of vehicles. However, the IRS figures inflation adjustments differently for (1) trucks (including SUVs treated as trucks) and vans and (2) regular passenger cars. Thus, beginning in 2019 when these figures are first adjusted for inflation, separate inflation adjusted caps will be provided for (1) trucks (including SUVs) and vans and for (2) regular passenger cars.

$8,000 increase in first-year cap if bonus depreciation claimed. The first-year depreciation cap on a passenger vehicle that is subject to the annual depreciation limitations of Code Sec. 280F is increased by $8,000 if 100 bonus depreciation is claimed. This is the same increase that applies when bonus depreciation is claimed at a 50 percent rate. However, the scheduled decrease in the $8,000 bump-up to $6,400 in 2018 and $4,800 in 2019 is eliminated (Code Sec. 168(k)(2)(F)(iii), stricken by the 2017 Tax Cuts Act). Thus, the $8,000 increase will continue to apply.

No depreciation deductions after first recovery year if 100 percent bonus claimed unless IRS provides safe harbor. When Congress last enacted a 100 percent bonus rate for property acquired after September 8, 2010 and placed in service before January 1, 2012 in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312), an unforeseen consequence was that taxpayers claiming the 100 percent bonus deduction on a vehicle were limited to a deduction equal to the first-year cap amount and could not claim any further depreciation deductions until after the end of the vehicle's regular recovery period. This is because (1) the basis of qualified property is reduced by the full amount of depreciation, including the bonus and section 179 allowance, without regard to the caps and (2) depreciation deductions that are disallowed by the depreciation caps (including bonus depreciation) are deferred until after the end of the vehicle's recovery period (Code Sec. 280F(a)(1)(B)).

The IRS, however, provided a safe harbor method that allowed a taxpayer to compute depreciation as if a 50 percent bonus rate applied so that depreciation deductions could be claimed during the entire recovery period of the vehicle (Section 3.03(5)(c) of Rev. Proc. 2011-26, 2011-16 I.R.B. 664).

Comment

According to the General Explanation of Tax Legislation Enacted in the 111th Congress (JCS-2-11) (the "Blue Book" explanation) Congress intended that a 50 percent bonus depreciation rate apply to vehicles placed in service after September 8, 2010 that were eligible for the 100 percent rate and subject to the Code Sec. 280F depreciation limitations. The report further states that a technical correction might be necessary to accomplish this result (Footnote 1597 of JCS-2-11). The IRS safe harbor in effect accomplished this result and no technical correction was enacted.

The following example illustrates why the safe harbor will once again be needed.

Example

A car (5-year MACRS property) costing $35,000 that is subject to the luxury car limitations is placed in service in November 2017 by a calendar-year taxpayer and the taxpayer claims 100 percent bonus depreciation on its 5-year property, including the vehicle. The 100 percent rate applies to property acquired and placed in service after September 27, 2017.

However, because the first-year depreciation cap for the vehicle is $11,160, the bonus deduction that may be deducted is limited to $11,160. If the IRS does not reinstate the safe harbor method of accounting, the $23,840 excess ($35,000 - $11,160) may only be recovered at the rate of $1,875 per year beginning in 2023, which is the first year after the end of the vehicle's recovery period. No regular depreciation deductions are allowed after the first year of the vehicle's regular recovery period because the vehicle's basis for computing depreciation deductions is reduced to $0 by the entire amount of the bonus depreciation allowable without regard to the first-year depreciation cap. The table percentages when applied to a depreciable basis of $0 are equal to $0 in each year of the vehicle's regular 5-year recovery period. The same problem applies to vehicles placed in service in 2018 and later years in which 100 percent bonus depreciation applies.

Year	***Regular Deduction***	***Luxury Car Cap***	***AllowableDepreciation***
2017	$35,000	$11,160	$11,160
2018	$0	$5,100	$0
2019	$0	$3,050	$0
2020	$0	$1,875	$0
2021	$0	$1,875	$0
2022	$0	$1,875	$0
		TOTAL	$11,160

Comment

A taxpayer may elect to apply the 50 percent rate instead of the 100 percent rate for property placed in service during the taxpayer's first tax year ending after September 27, 2017 (Code Sec. 168(k)(8), as added by the 2017 Tax Cuts Act). Thus, for the 2017 tax year only, the taxpayer in the preceding example could avoid the adverse result by electing the 50 percent rate. The election, however, would apply to all 5-year property placed in service during the 2017 tax year and not just vehicles with a 5-year recovery period. As previously mentioned, however, the IRS is likely to issue a safe harbor to resolve this unintended situation.

Effective date. The provisions apply to property placed in service after December 31, 2017, in tax years ending after such date (Act Sec. 13202(c) of the Tax Cuts and Jobs Act (P.L. 115-97)).

DEPRECIATION OF REAL PROPERTY

Effective for property placed in service after December 31, 2017:

- qualified improvement property is assigned a 15-year recovery period if a technical correction is enacted
- the property classes for 15-year leasehold improvement property, retail improvement property, and restaurant improvements and buildings are eliminated

- ADS recovery period for residential rental property is reduced from 40 years to 30 years
- ADS must be used by an electing real property trade or business to depreciate residential rental property, nonresidential real property, and qualified improvement property (effective for tax years beginning after December 31, 2017)

Caution

The explanations in this section assume that qualified improvement property placed in service after December 31, 2017 will have a 15-year recovery period as intended by Congress.

The Senate bill would have provided a 10-year recovery period for qualified improvement property (Act Sec. 13204(b)(1), adding Code Sec. 168(e)(3)(v)). The House bill contained no provision. The final bill, according to the Conference Report on H.R. 1, Tax Cuts and Jobs Act (H. Rept. 115-466) sets a 15-year recovery period for qualified improvement property effective for property placed in service after December 31, 2017. However, the text of the final bill inadvertently omits the provision which would have given a 15-year recovery period for qualified improvement property. A technical correction will be needed to create a 15-year recovery period for qualified improvement property and all such property in the absence of such a correction will be treated as 39-year nonresidential real property, effective for property placed in service after December 31, 2017.

An unintended consequence of failing to provide a 15-year recovery period for qualified improvement property placed in service after December 31, 2017, is that such property will not qualify for bonus depreciation. As explained above, qualified improvement property was removed as a specific category of bonus depreciation property, effective for property placed in service after December 31, 2017 (Code Sec. 168(k)(3), as stricken by the 2017 Tax Cuts Act) on the assumption that all qualified improvement property would have a 15-year recovery period and, therefore, qualify for bonus depreciation under the general rule that allows MACRS property with a recovery period of 20 years or less to qualify for bonus depreciation.

Qualified improvement property assigned 15-year recovery period. Qualified improvement property is assigned a recovery period of 15 years, effective for property placed in service after December 31, 2017, assuming a technical correction is made. Qualified improvement property is depreciated using the straight-line method and half-year convention or, if applicable, the mid-quarter convention (Code Sec. 168(b)(3)(G), as added by the 2017 Tax Cuts and Jobs Act)). The alternative depreciation system (ADS) recovery period for qualified improvement property is 20 years (Code Sec. 168(g)(3)(B), as amended by the 2017 Tax Cuts Act).

Comment

The amended table in Code Sec. 168(g)(3)(B), makes an erroneous reference to subparagraph (D)(iv) of Code Sec. 168(e)(3) in establishing the intended 20-year ADS period for qualified improvement property. In the original Senate Bill, subparagraph (D)(iv) of Code Sec. 168(e)(3) added qualified improvement property to the list of property with a 10-year recovery period. Subparagraph (D)(iv) was not included in the text of the final bill because the final bill intended to change the recovery period of qualified improvement property to 15-years instead. See "*Caution*" note above.

The definition of qualified improvement property for purposes of the new 15-year recovery period is the same as the definition that has applied for bonus depreciation purposes. Specifically, qualified improvement property is defined as any improvement to an interior portion of a building which is nonresidential real property if the improvement is placed in service after the date the building was first placed in service by any taxpayer (Code Sec. 168(e)(6)(A), as added by the 2017 Tax Cuts Act. However, qualified improvement property does not include expenditures attributable to:

- the enlargement of a building
- any elevator or escalator
- the internal structural framework of a building (Code Sec. 168(e)(6)(B), as added by the 2017 Tax Cuts Act):

Comment

Qualified improvement property has been a category of property eligible for bonus depreciation since the enactment of the Protecting Americans from Tax Hikes Act of 2015 (December 18, 2015) (P.L. 114-113) (PATH Act), effective for property placed in service after December 31, 2015. However, the depreciation period for property which met the definition of qualified improvement property for bonus depreciation purposes was 15 years if the improvement also met the definition of a qualified leasehold improvement, a qualified retail improvement, or a qualified restaurant improvement. If the 15-year recovery period did not apply, then the qualified improvement property was depreciated over 39 years as MACRS nonresidential real property. Under the new law, all qualified improvement property is assigned a 15-year recovery period. The 15-year recovery periods previously provided for a qualified leasehold, retail, and restaurant improvements are repealed.

Comment

The definition of qualified improvement property for bonus depreciation purposes was formerly located in Code Sec. 168(k)(3), relating to bonus depreciation. The new law moves the definition of qualified improvement property to Code Sec. 168(e)(6)(B) and assigns a 15-year recovery period (assuming a correction is made (see "*Caution*" note above). Qualified improvement property, however, still remains eligible for bonus depreciation even though it has been removed as a separate category of bonus depreciation property. Now that all qualified improvement property is assigned a 15-year recovery period it will qualify for bonus depreciation under the generally applicable rule requiring that bonus depreciation property must have a recovery period of 20 years of less. Previously, some qualified improvement property had a 39-year recovery period and could not have qualified for bonus depreciation unless qualified improvement property was treated as a separate category of bonus depreciation property without regard to its recovery period. This special treatment is no longer necessary.

15-year qualified leasehold, retail, and restaurant improvement property classes eliminated. The property classifications for 15-year qualified leasehold improvement property, qualified retail improvement property, and qualified restaurant property are removed (Code Sec. 168(e)(3)(E), as amended by the 2017 Tax Cuts Act; Code Secs. 168(e)(6), (7), and (8), stricken by the 2017 Tax Cuts Act). See "*Background*" section above for the definition of these categories of property. All improvements which previously qualified for a 15-year recovery period as qualified leasehold improvement property or qualified retail improvement property fall within the definition of qualified improvement property and have a 15-year recovery period, effective for property placed in service after December 31, 2017 (assuming a correction is made (see "*Caution*" note above). Improvements to a restaurant will only qualify for the 15-year recovery period for qualified improvement property if the improvement to is to the interior of the restaurant and does not relate to an enlargement or internal structural framework of the building or an elevator or escalator. External improvements to a restaurant and restaurant buildings which currently qualify as 15-year qualified restaurant property do not meet the definitional requirements of qualified improvement property and are not eligible for the 15-year recovery period. Such property will be depreciated over 39 years, effective for property placed in service after December 31, 2017.

Comment

If any property meets the definition of 15-year qualified leasehold improvement property or 15-year qualified retail property it will necessarily meet the definitional requirements of qualified improvement property and be eligible for the new 15-year recovery period that applies to such property. Consequently, the elimination of these two property classifications has no negative impact. Not all 15-year restaurant property, however, will meet the definitional requirements of qualified improvement property. Most significantly, 15-year qualified restaurant property is defined to include restaurant buildings. Qualified improvement property only includes internal improvements to a building. This means that a restaurant building will not qualify for a 15-year recovery period as qualified improvement property. Instead, effective for restaurants placed in service after December 31, 2017, restaurant buildings will once again be treated as nonresidential real property and the 39-year recovery period for nonresidential real property applies. 15-year restaurant property is also defined to include external as well as internal improvements. Since external improvements to a building are excluded from the definition of qualified improvement property, external improvements to a restaurant will also be treated as 39 year nonresidential real property, effective for improvements placed in service after December 31, 2017. Again, this comment assumes that a technical correction will be enacted.

Real property trade or business electing out of interest deduction limits must use ADS for residential rental property, nonresidential real property, and qualified improvement property. An electing real property trade or business must use the MACRS alternative depreciation system (ADS) to depreciate any nonresidential real property, residential rental property, or qualified improvement property it holds (Code Sec. 168(g)(1), as amended by the 2017 Tax Cuts Act). The provision is effective for tax years beginning after December 31, 2017 (Act Sec. 13204(b)(2), of 2017 Tax Cuts Act).

An electing real property trade or business is a real property trade or business that elects out of new rules which disallow deduction for net interest expense in excess of 30 percent of a business' adjusted taxable income (Code Sec. 163(j)(7)(B), as added by the 2017 Tax Cuts Act). "Real property trade or business" means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business (Code Sec. 469(c)(7)(C)).

Comment

The ADS period for nonresidential real property is 40 years. The ADS period for residential rental property is reduced from 40 years to 30 years, effective for property placed in service after December 31, 2017, although it is not clear whether Congress intended to make this change (Code Sec. 168(g)(2)(C), as amended by the 2017 Tax Cuts Act). See discussion below. The ADS period for qualified improvement property is intended to be 20 years, although a technical correction is necessary to create the intended 15-year regular depreciation period for such property. See, "*Caution*" above.

Comment

Since this provision applies to tax years beginning after December 31, 2017, and not to *property placed in service* in tax years beginning after December 31, 2017, it appears that an electing real property trade or businesses will also be required to depreciate nonresidential rental, nonresidential real property, and qualified improvement property placed in service in tax years before the election year using the ADS method beginning in year of election.

Regular and ADS recovery periods for MACRS residential rental and MACRS nonresidential real property. A provision in the original Senate bill would have reduced the recovery period for MACRS residential rental property from 27.5 years to 25 years and the recovery period for nonresidential real property is decreased from 39 years to 25 years, effective for property placed in service after December 31, 2017. This provision was dropped from the final bill. Consequently, the recovery period for residential rental property remains 27.5 years and the recovery period for nonresidential real property remains 39 years.

ADS period for residential real property reduced from 40 to 30 years. The original Senate bill *also reduced the MACRS alternative depreciation system (ADS) reco*very period for residential rental property from 40 years to 30 years. This provision was retained, perhaps inadvertently, in the final bill (Code Sec. 168(g)(2)(C), as amended by the 2017 Tax Cuts Act).

Effective date. The amendments in this section apply to property placed in service after December 31, 2017 (Act Sec. 13204(b)(1) of the Tax Cuts and Jobs Act (P.L. 115-97). The amendment requiring an electing real property trade or business to use ADS to depreciate its real property is effective for tax years beginning after December 31, 2017 (Act Sec. 13204(b)(2) of the 2017 Tax Cuts Act).

DEPRECIATION OF FARM PROPERTY

Effective for property placed in service after 2017, modifications to the treatment of certain farm equipment include:

- a decrease in the 7-year recovery period for new farming machinery and equipment to 5 years
- elimination of the rule requiring use of the 150-percent-declining balance method on property used in a farming business
- farming business electing out of interest deduction limitation must use ADS for property with recovery period of 10 years or greater.

Five-year recovery period for new farming machinery and equipment. Effective for property placed in service after December 31, 2017, a 5-year recovery period applies to any machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) used in a farming business if the original use commences with the taxpayer after December 31, 2017 (Code Sec. 168(e)(3)(B)(vii), as amended by the Tax Cuts and Jobs Act (P.L. 115-97). Generally, a seven-year recovery period previously applied to this property (Rev. Proc. 87-56, Asset Class 01.1).

Caution

The provision only applies to new machinery and equipment used in a farming business. A 7-year recovery period continues to apply to used farming machinery and equipment.

200-percent declining method allowed for farming property. The provision that requires MACRS 3-, 5-, 7-, and 10-year property placed in service after 1988 and used in a farming business to be depreciated using the 150-percent declining balance (DB) method in place of the normally applicable 200 percent DB method is repealed, effective for property placed in service after December 31, 2017 (Code Sec. 168(b)(2)(B), as stricken by the 2017 Tax Cuts Act).

Comment

A taxpayer may now elect to depreciate any class of 3-, 5-, 7-, or 10-year farming property using the 150-percent declining balance method (Code Sec. 168(b)(2)(D)). The election was not previously available because such property had to be depreciated using the 150-percent declining balance method unless an election to use the MACRS straight-line method or the MACRS alternative depreciation system (ADS) was made.

Farming business defined. As defined in Code Sec. 263A(e)(4) and Reg. §1.263A-4(a)(4), the term "farming business" means a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity (e.g., the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit, nuts, or other crops; the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals). A farming business includes processing activities that are normally incident to the growing, raising, or harvesting of agricultural or horticultural products. A farming business does not include contract harvesting of an agricultural or horticultural commodity grown or raised by another taxpayer, or merely buying and reselling plants or animals grown or raised by another taxpayer.

Farming business electing out of interest deduction limitation must use ADS for property with recovery period of 10 years or greater. Any property with a recovery period of 10 years or greater which is held by an "electing farming business" that makes an election out of the new rules which disallow the deduction for net interest expense in excess of 30 percent of the business' adjusted taxable income must be depreciated using the MACRS alternative depreciation system (ADS) (Code Sec. 168(g)(1)(G), as added by the 2017 Tax Cuts Act).

Comment

Under ADS, the straight-line method applies using a recovery period that is usually longer than the regular recovery period. The ADS recovery period is the asset's class life, usually as shown in Rev. Proc. 87-56.

An electing farming business is a farming business as defined above that elects out of the interest deduction limitation or any trade or business of a "specified agricultural or horticultural cooperative" (as defined in new Code Sec. 199A(g)(2)) with respect to which the cooperative makes an election out of the interest deduction limitation (Code Sec. 167(j)(7), as added by the 2017 Tax Cuts and Jobs Act).

A specified agricultural or horticultural cooperative is an organization to which part I of subchapter T applies, and which is engaged in—

(1) the manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural product;
(2) the marketing of agricultural or horticultural products which its patrons have so manufactured, produced, grown, or extracted; or
(3) the provision of supplies, equipment, or services to farmers or to organizations in items (1) or (2) (Code Sec. 199A(g), as added by the 2017 Tax Cuts Act).

Effective date. The amendments reducing the recovery period of farm machinery and allowing use of the 200-percent declining method apply to property placed in service after December 31, 2017, in tax years ending after such date (Act Sec. 13203(c) of the Tax Cuts and Jobs Act (P.L. 115-97)). The amendment requiring an electing farming business to use ADS to depreciate property with a recovery period of 10 years or greater applies to tax years beginning after December 31, 2017 (Act Sec. 13205(b) of the 2017 Tax Cuts Act).

COMPUTERS AND PERIPHERAL EQUIPMENT REMOVED FROM LISTED PROPERTY STATUS

- Effective for property placed in service after December 31, 2017, computers and peripheral equipment are removed as a category of listed property (Code Sec.

280F(d)(4)(A), as amended by the Tax Cuts and Jobs Act (P.L. 115-97)). As a result, the cost of computers and peripheral equipment can be deducted or depreciated like other business property and are no longer subject to the strict substantiation requirements of Code Sec. 274(d).

Comment

The removal of computers from listed property status will allow more employees to depreciate or expense the cost of computers since the convenience of the employer and condition of employment requirements of Code Sec. 280F(d)(3) will no longer apply.

A conforming amendment strikes a provision which excludes a computer or peripheral equipment from the definition of listed property if it is used exclusively at a regular business establishment and owned or leased by the person operating the establishment (Code Sec. 280F(d)(4)(B), stricken by the Tax Cuts Act of 2017).

Impact on depreciation. The declassification of computers as listed property means that a computer used 50 percent or less for business purposes in the year that it is placed in service is no longer required to be depreciated under the MACRS alternative depreciation system (ADS) using the straight-line method and a five-year ADS recovery period. Instead, the five-year recovery period and the 200 percent declining balance method under the MACRS general depreciation system (GDS) will apply. Furthermore, if the computer is placed in service after 2017, bonus depreciation may be claimed even if business use is 50 percent or less, because the rule under Code Sec. 168(k)(2)(D)(i)(II) that bonus depreciation may not be claimed on a listed property used 50 percent or less for business in the year it is placed in service will no longer apply.

Removal of computers from listed property status also means that if business use drops to 50 percent or less in a tax year after the computer is placed in service, the listed property recapture rules will not apply. Consequently, regular depreciation deductions (including any bonus deduction) will not be recaptured upon such a business use decline. However, as explained below, section 179 recapture is still required.

Impact on section 179 expensing. Under current law, property may not be expensed under Code Sec. 179 if it is not used more than 50 percent for trade or business purposes in the tax year that it is placed in service (Code Sec. 179(d)(10); Reg. §1.179-1(d)(1)). This rule applies to listed and nonlisted property (Temporary Reg. §1.280F-3T(c)(1)). Thus, although computers are no longer considered listed property if placed in service after December 31, 2017, the failure to use the computer more than 50 percent in a trade or business in the tax year that the computer is placed in service will continue to prevent a taxpayer from expensing the portion of the cost of the computer that is not attributable to business use.

The amount expensed under Code Sec. 179 is recaptured if business use falls to 50 percent or less during any year of the expensed asset's recovery period (Code Sec. 179(d)(10); Reg. §1.179-1(e)). However, if the section 179 deduction is claimed on a listed property, the amount recaptured is determined by applying the listed property recapture rules when business use drops to 50 percent or less (Code Sec. 280F(d)(1)). That is, the listed property recapture rules take precedence in determining the recapture amount. As the result of the removal of computers from listed property classification, the section 179 recapture rules will now be used to determine the amount of section 179 allowance that is recaptured. The recapture amount included in ordinary income under the Code Sec. 179 recapture rules is the difference between the Code Sec. 179 expense allowance claimed and the depreciation (including bonus depreciation, if applicable) that would have been allowed on the amount expensed for prior tax years and the tax year of recapture (Reg. §1.179-1(e)(1)).

Caution

Since the provision declassifying computers as listed property applies to property placed in service after December 31, 2017, the listed property recapture rules continue to apply to computers placed in service before January 1, 2018.

Impact on fringe benefits. The declassification of computers as listed property means that employees must not longer meet the substantiation requirements under Code Sec. 274(d) in order to exclude the value of the availability of the computer from income as a working condition fringe benefit (Temporary Reg. §1.274-5T(e)). The new law does not affect the IRS's authority to determine the appropriate characterization of computers as a working condition fringe benefit under Code Sec. 132(d), or that the personal use of computers that are provided primarily for business purposes may constitute a *de minimis* fringe benefit under Code Sec. 132(e), the value of which is so small as to make accounting for it administratively impracticable.

Effective date. The provisions apply to property placed in service after December 31, 2017, in tax years ending after such date (Act Sec. 13202(c) of the Tax Cuts and Jobs Act of 2017 (P.L. 115-97).