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Internal Revenue Code Section 168(n)(5)

Accelerated cost recovery system

. . .

(n) Special allowance for qualified production property.

(1) In general.

In the case of any qualified production property of a taxpayer making an election under this subsection-

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 100 percent of the adjusted basis of the qualified production property, and

(B) the adjusted basis of the qualified production property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified production property.

For purposes of this subsection-

(A) In general. The term "qualified production property" means that portion of any nonresidential real property-

(i) to which this section applies,

(ii) which is used by the taxpayer as an integral part of a qualified production activity,

(iii) which is placed in service in the United States or any possession of the United States,

(iv) the original use of which commences with the taxpayer,

(v) the construction of which begins after January 19, 2025, and before January 1, 2029,

(vi) which is designated by the taxpayer in the election made under this subsection, and

(vii) which is placed in service before January 1, 2031.

For purposes of clause (ii) , in the case of property with respect to which the taxpayer is a lessor, property used by a lessee shall not be considered to be used by the taxpayer as part of a qualified production activity.

(B) Special rule for certain property not previously used in qualified production activities.

(i) In general. In the case of property acquired by the taxpayer during the period described in subparagraph (A)(v) , the requirements of clauses (iv) and (v) of subparagraph (A) shall be treated as satisfied if-

(I) such property was not used in a qualified production activity (determined without regard to the second sentence of subparagraph (D)) by any person at any time during the period beginning on January 1, 2021, and ending on May 12, 2025,

(II) such property was not used by the taxpayer at any time prior to such acquisition, and

(III) the acquisition of such property meets the requirements of paragraphs (2)(A) , (2)(B) , (2)(C) , and (3) of section 179(d) .

(ii) Written binding contracts. For purposes of determining under clause

(i) -

(I) whether such property is acquired before the period described in subparagraph (A)(v) , such property shall be treated as acquired not later than the date on which the taxpayer enters into a written binding contract for such acquisition, and

(II) whether such property is acquired after such period, such property shall be treated as acquired not earlier than such date.

(C) Exclusion of office space, etc. The term "qualified production property" shall not include that portion of any nonresidential real property which is used for offices, administrative services, lodging, parking, sales activities, research activities, software development or engineering activities, or other functions unrelated to the manufacturing, production, or refining of tangible personal property.

(D) Qualified production activity. The term "qualified production activity" means the manufacturing, production, or refining of a qualified product. The activities of any taxpayer do not constitute manufacturing, production, or refining of a qualified product unless the activities of such taxpayer result in a substantial transformation of the property comprising the product.

(E) Production. The term "production" shall not include activities other than agricultural production and chemical production.

(F) Qualified product. The term "qualified product" means any tangible personal property if such property is not a food or beverage prepared in the same building as a retail establishment in which such property is sold.

(G) Syndication. For purposes of subparagraph (A)(iv) , rules similar to the rules of subsection (k)(2)(E)(iii) shall apply.

(H) Extension of placed in service date under certain circumstances. The Secretary may extend the date under subparagraph (A)(vii) with respect to any property that meets the requirements of clauses (i) through (vi) of subparagraph (A) if the Secretary determines that an act of God (as defined in section 101(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) prevents the taxpayer from placing such property in service before such date.

(3) Deduction allowed in computing minimum tax.

For purposes of determining alternative minimum taxable income under section 55 , the deduction under section 167 for qualified production property shall be determined under this section without regard to any adjustment under section 56 .

(4) Coordination with certain other provisions.

(A) Other special depreciation allowances. For purposes of subsections (k)(7), (l)(3)(D), and (m)(2)(B)(iii)-

(i) qualified production property shall be treated as a separate class of property, and

(ii) the taxpayer shall be treated as having made an election under such subsections with respect to such class.

(B) Alternative depreciation property. The term "qualified production property" shall not include any property to which the alternative depreciation system under subsection (g) applies . For purposes of subsection (g)(7)(A) , qualified production property to which this subsection applies shall be treated as separate nonresidential real property.

 (5) Recapture.

If, at any time during the 10-year period beginning on the date that any qualified production property is placed in service by the taxpayer, such property ceases to be used as described in paragraph (2)(A)(ii) and is used by the taxpayer in a productive use not described in paragraph (2)(A)(ii) -

(A) section 1245 shall be applied-

(i) by treating such property as having been disposed of by the taxpayer as of the first time such property is so used in a productive use not described in paragraph (2)(A)(ii) , and

(ii) by treating the amount described in subparagraph (B) of section 1245(a)(1) with respect to such disposition as being not less than the amount described in subparagraph (A) of such section , and

(B) the basis of the taxpayer in such property, and the taxpayer's allowance for depreciation with respect to such property, shall be appropriately adjusted to take into account amounts recognized by reason of subparagraph (A) .

(6) Election.

(A) In general. An election under this subsection for any taxable year shall-

(i) specify the nonresidential real property subject to the election and the portion of such property designated under paragraph (2)(A)(vi) , and

(ii) except as otherwise provided by the Secretary, be made on the taxpayer's return of the tax imposed by this chapter for the taxable year.

Such election shall be made in such manner as the Secretary may prescribe by regulations or other guidance.

(B) Election. Any election made under this subsection, and any specification contained in any such election, may not be revoked except with the consent of the Secretary (and the Secretary shall provide such consent only in extraordinary circumstances).

(7) Regulations.

The Secretary shall issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this subsection, including regulations or other guidance-

(A) providing rules for regarding what constitutes substantial transformation of property which are consistent with guidance provided under section 954(d) , and

(B) providing for the application of paragraph (5) with respect to a change in use described in such paragraph by a transferee following a fully or partially tax free transfer of qualified production property.