of certain personal property manufactured or produced in Puerto Rico and certain services performed in Puerto Rico. Technical corrections to the legislation were enacted on October 28, 2010, and January 31, 2011. Final regulations relating to the Expanded ECI Rules and the Excise Tax were published on December 29, 2010. The Expanded ECI Rules and the Excise Tax are generally effective for income accruing and acquisitions occurring, respectively, after December 31, 2010.

Section 901 allows a credit against U.S. income tax for the amount of any income, war profits and excess profits tax (collectively, an "income tax") paid or accrued during the taxable year to any foreign country or to any possession of the United States. A foreign levy is an income tax only if (a) it is a tax and (b) the predominant character of that tax is that of an income tax in the U.S. sense. §1.901–2(a)(1) of the Income Tax Regulations.

Under section 903, an income tax includes a tax paid or accrued in lieu of an income tax that is otherwise generally imposed by any foreign country or by any possession of the United States. Section 1.903–1(a) provides that a foreign levy is a tax in lieu of an income tax only if it is a tax within the meaning of §1.901–2(a)(2) and it meets the "substitution requirement" of §1.903–1(b). A foreign levy satisfies the substitution requirement only if it operates in substitution for and not in addition to a generally imposed income tax or series of income taxes and only to the extent that liability for the foreign tax is not dependent (by its terms or otherwise) on the availability of a credit for the foreign tax against income tax liability to another country. §1.903–1(b)(1) and (2).

The IRS and the Treasury Department are evaluating the Excise Tax. The provisions of the Excise Tax are novel. The determination of the creditability of the Excise Tax requires the resolution of a number of legal and factual issues. Pending the resolution of these issues, the IRS will not challenge a taxpayer's position that the Excise Tax is a tax in lieu of an income tax under section 903. This notice is effective for Excise Tax paid or accrued on or after January 1, 2011. Any change in the foreign tax credit treatment of the Excise Tax after resolution of the pending issues will be prospective, and will apply to Excise Tax paid or accrued after the date that further guidance is issued.

Various personnel from the IRS and the Treasury Department participated in the development of this notice. For further information regarding this notice, contact Richard L. Chewning at (202) 622–3850 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, §§ 168, 280F; 1.168(k)–1.)

Rev. Proc. 2011–26

SECTION 1. PURPOSE

This revenue procedure provides guidance under § 2022(a) of the Small Business Jobs Act of 2010, Pub. L. No. 111–240, 124 Stat. 2504 (September 27, 2010) (SBJA), and § 401(a) and (b) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111–312, 124 Stat. 3296 (December 17, 2010) (TRUIRJCA). Sections 2022(a) of the SBJA and 401(a) of the TRUIRJCA amend § 168(k)(2) of the Internal Revenue Code by extending the placed-in-service date for property to qualify for the 50-percent additional first year depreciation deduction. Section 401(b) of the TRUIRJCA amends § 168(k) by adding § 168(k)(5), which temporarily allows a 100-percent additional first year depreciation deduction for certain new property.

SECTION 2. BACKGROUND

.01 Prior to the enactment of the SBJA, § 168(k)(1) allowed a 50-percent additional first year depreciation deduction for qualified property acquired by a taxpayer after 2007 and placed in service by the taxpayer before 2010 (before 2011 in the case of property described in § 168(k)(2)(B) and (C)). Section 2022(a) of the SBJA amends § 168(k)(2) by extending the placed-in-service date to before 2011 (before 2012 in the case of property described in § 168(k)(2)(B) and (C)), and extending other dates in § 168(k)(2) from "January 1, 2010" to "January 1, 2011" (for example, the self-constructed property rules in § 168(k)(2)(E)(i)). Section 2022(c) of the SBJA provides that these amendments apply to property placed in service after December 31, 2009, in taxable years ending after that date.

.02 Section 401(a) of the TRUIRJCA further amends § 168(k)(2) by extending the placed-in-service date to before 2013 (before 2014 in the case of property described in § 168(k)(2)(B) and (C)), and extending other dates in § 168(k)(2) from "January 1, 2011" to "January 1, 2013" (for example, the self-constructed property rules in § 168(k)(2)(E)(i)). Section 401(e)(1) of the TRUIRJCA provides that these amendments apply to property placed in service after December 31, 2010, in taxable years ending after that date.

.03 Section 401(b) of the TRUIRJCA also amends § 168(k) by adding § 168(k)(5) to the Code. It allows a 100-percent additional first year depreciation deduction for qualified property acquired by a taxpayer (under rules similar to the rules of § 168(k)(2)(A)(ii) and (iii)) after September 8, 2010, and before January 1, 2012, and placed in service by the taxpayer before January 1, 2012 (before January 1, 2013, in the case of property described in § 168(k)(2)(B) and (C)). Section 401(e)(2) of the TRUIRJCA provides that § 168(k)(5) applies to property placed in service after September 8, 2010, in taxable years ending after such date. Section 3 of this revenue procedure defines which property is eligible for the 100-percent additional first year depreciation deduction.

.04 Sections 1.168(k)–1(b)(4)(iii)(C)(*1*) and (*2*) of the Income Tax Regulations provide that if the manufacture, construction, or production of the larger self-constructed property begins before December 31, 2007 (as modified by the dates in § 168(k)(2)(E)(i)), for qualified property, the larger self-constructed property and any acquired or self-constructed components related to the larger self-constructed property do not qualify for the 50-percent additional first year depreciation deduction. Because of the policies underlying the enactment of an unprecedented 100-percent additional first year depreciation provision, rules similar to, but not necessarily the same as, the acquisition rules under § 168(k)(2)(A)(iii) for qualified property are warranted solely for purposes of § 168(k)(5). Accordingly, the Treasury Department and the Internal Revenue Service ("the Service") will allow, solely for purposes of § 168(k)(5), a limited exception to this rule in §§ 1.168(k)–1(b)(4)(iii)(C)(*1*) and (*2*) for certain components. See section 3.02(2)(b) of this revenue procedure for this limited exception.

.05 Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct additional first year depreciation for any class of property placed in service by the taxpayer during the taxable year. The term "class of property" is defined in § 1.168(k)–1(e)(2)(i) to mean, in general, each class of property described in § 168(e) (for example, 5-year property). If the taxpayer makes this election, it applies to all qualified property that is in the same class and placed in service in the same taxable year. This revenue procedure provides a limited exception for a taxpayer to elect the 50-percent, instead of the 100-percent, additional first year depreciation deduction for certain qualified property placed in service by the taxpayer in its taxable year that includes September 9, 2010 (see section 4.02 of this revenue procedure). Section 4.03 of this revenue procedure specifies the time and manner for making this election.

.06 Section 1.168(k)–1(e)(3)(i) provides that the election not to deduct additional first year depreciation must be made by the due date (including extensions) of the federal tax return for the taxable year in which the taxpayer places the property in service. Section 1.168(k)–1(e)(3)(ii) provides that this election generally must be made in the manner prescribed on Form 4562, *"Depreciation and Amortization,"* and its instructions. The instructions to Form 4562 for the 2009 and 2010 taxable years provide that the election is made by attaching a statement to the taxpayer's timely filed tax return indicating that the taxpayer is electing not to deduct the additional first year depreciation and the class of property for which the taxpayer is making the election. Section 1.168(k)–1(e)(7)(i) provides that once the election is made, it generally may be revoked only with the written consent of the Commissioner of Internal Revenue. Some taxpayers with a taxable year beginning in 2009 and ending in 2010 that filed their 2009 federal tax returns before the enactment of the SBJA are uncertain how to claim or not claim the 50-percent additional first year depreciation for qualified property placed in service after December 31, 2009, in taxable years ending in 2010. Section 5 of this revenue procedure provides the procedures for claiming or not claiming the 50-percent additional first year depreciation for this property.

SECTION 3. 100-PERCENT ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION

.01 *In General*. Depreciable property is eligible for the 100-percent additional first year depreciation deduction if the property is qualified property (as defined in § 168(k)(2), as amended by the SBJA and the TRUIRJCA) and also meets the additional requirements in section 3.02 of this revenue procedure. For purposes of determining whether depreciable property is qualified property, rules similar to the rules in § 1.168(k)–1 for "qualified property" or for "30-percent additional first year depreciation deduction" apply.

.02 *Application of Additional Requirements and Revised Dates*.

(1) *In general*. For purposes of § 168(k)(5), qualified property is eligible for the 100-percent additional first year depreciation deduction if the property meets all of the following additional requirements in the first taxable year in which the property is subject to depreciation by the taxpayer, whether or not depreciation deductions for that property are allowable:

(a) The taxpayer acquires the qualified property after September 8, 2010, and before January 1, 2012 (before January 1, 2013, in the case of qualified property described in § 168(k)(2)(B) or (C)). Solely for purposes of § 168(k)(5) and this section 3.02(1)(a), a taxpayer acquires the qualified property when the taxpayer pays or incurs the cost of the property. Qualified property that a taxpayer manufactures, constructs, or produces (as defined under § 1.168(k)–1(b)(4)(iii)(A) and modified by this section 3.02(1)(a) solely for purposes of § 168(k)(5)) for use in its trade or business or for its production of income is acquired by the taxpayer for purposes of § 168(k)(5) and this section 3.02(1)(a) when the taxpayer begins constructing, manufacturing, or producing that property (as determined under § 1.168(k)–1(b)(4)(iii)(B)). If a taxpayer enters into a written binding contract (as defined in § 1.168(k)–1(b)(4)(ii)) after September 8, 2010, and before January 1, 2012, to acquire (including to manufacture, construct, or produce) qualified property described in § 168(k)(2)(B) or (C), the property will be treated as having met the acquisition requirement of this section 3.02(1)(a). See section 3.02(2) of this revenue procedure for additional rules applicable to self-constructed property.

(b) The taxpayer places the qualified property in service after September 8, 2010, and before January 1, 2012 (before January 1, 2013, in the case of qualified property described in § 168(k)(2)(B) or (C)). For this purpose, rules similar to the rules in § 1.168(k)–1(b)(5) apply. However, in applying § 1.168(k)–1(b)(5)(ii), "December 31, 2007" is substituted for "September 10, 2001."

(c) The original use of the qualified property commences with the taxpayer after September 8, 2010. For this purpose, rules similar to the rules in § 1.168(k)–1(b)(3) apply. However, in applying § 1.168(k)–1(b)(3)(i), "September 8, 2010" is substituted for "September 10, 2001" and, in applying § 1.168(k)–1(b)(3)(iii), "December 31, 2007" is substituted for "September 10, 2001."

(2) *Self-constructed property*.

(a) *Application of § 1.168(k)–1(b)(4)(iii)*. If a taxpayer manufactures, constructs, or produces qualified property for use by the taxpayer in its trade or business or for its production of income, rules similar to the self-constructed property rules in § 1.168(k)–1(b)(4)(iii) apply for determining whether this property meets the acquisition requirement of section 3.02(1)(a) of this revenue procedure. However, see section 3.02(2)(b) of this revenue procedure for a limited exception for certain components of a larger self-constructed property. Further, in applying § 1.168(k)–1(b)(4)(iii)(C)(*1*) solely for purposes of § 168(k)(5), an acquired component that is qualified property is not required to be acquired pursuant to a written binding contract (as defined in § 1.168(k)–1(b)(4)(ii)) to satisfy the acquisition requirement of section 3.02(1)(a) of this revenue procedure. For purposes of the additional first year depreciation deduction, the term "component" is intended to refer to any part used in the manufacture, construction, or production of the larger self-constructed property, which may or may not be the same as the asset for depreciation purposes or the same as the unit of property for purposes of other Code sections.

(b) *Limited exception for components acquired or self-constructed after September 8, 2010, and before January 1, 2012, when the manufacture, construction, or production of larger self-constructed property begins before September 9, 2010.* Solely for purposes of § 168(k)(5) and section 3.02(1)(a) of this revenue procedure, the Treasury Department and the Service will allow a limited exception to the rule described in section 2.04 of this revenue procedure for the components described in this section 3.02(2)(b). If before September 9, 2010, a taxpayer begins the manufacture, construction, or production of the larger self-constructed property that is qualified property for use in its trade or business or for its production of income, but this larger self-constructed property meets the requirements of sections 3.02(1)(b) and (c) of this revenue procedure, the taxpayer may elect to treat any acquired or self-constructed component of that larger self-constructed property as being eligible for the 100-percent additional first year depreciation deduction if the component is qualified property and is acquired or self-constructed by the taxpayer after September 8, 2010, and before January 1, 2012 (before January 1, 2013, in the case of qualified property described in § 168(k)(2)(B) or (C)). The taxpayer may make this election for one or more components that are described in this section 3.02(2)(b). The taxpayer must make the election in this section 3.02(2)(b) by the due date (including extensions) of the federal tax return for the taxpayer's taxable year in which the larger self-constructed property is placed in service by the taxpayer, and by attaching a statement to that return indicating that the taxpayer is making the election provided in section 3.02(2)(b) of Rev. Proc. 2011–26 and whether the taxpayer is making the election for all or some of the components described in section 3.02(2)(b) of Rev. Proc. 2011–26. If a taxpayer has timely filed its federal tax return for the taxpayer's taxable year in which the larger self-constructed property is placed in service by the taxpayer on or before April 18, 2011, see § 301.9100–2(b) of the Procedure and Administration Regulations for an automatic extension of 6 months from the due date of that federal return (excluding extensions) to make the election specified in this section 3.02(2)(b).

(3) *Disqualified transactions*. A rule similar to the rule in § 168(k)(2)(E)(iv) applies for determining whether qualified property fails the acquisition requirement of section 3.02(1)(a) of this revenue procedure. Solely for purposes of § 168(k)(5):

(a) Section 168(k)(2)(E)(iv)(I) and (II) is applied by substituting "September 8, 2010" for "December 31, 2007;"

(b) Section 1.168(k)–1(b)(4)(iv)(A) is applied by substituting "September 9, 2010" for "September 11, 2001;" and

(c) In determining when the qualified property was originally placed in service for purposes of § 1.168(k)–1(b)(4)(iv), this determination includes the operation of § 1.168(k)–1(b)(5)(ii) as modified by section 3.02(1)(b) of this revenue procedure, § 1.168(k)–1(b)(5)(iii), and § 1.168(k)–1(b)(5)(iv).

.03 *Special Rules*.

(1) *Application of § 1.168(k)–1(f)*.

(a) *In general*. Solely for purposes of § 168(k)(5), the rules of § 168(k)–1(f) apply to depreciable property that is qualified property and that also meets the requirements of section 3.02 of this revenue procedure. For example, for purposes of the redetermination of basis rules of § 1.168(k)–1(f)(2), the 100-percent additional first year depreciation deduction applies to the increase or decrease in basis of qualified property if the underlying property is eligible for the 100-percent additional first year depreciation deduction. In addition, in applying § 1.168(k)–1(f) for purposes of § 168(k)(5), the taxpayer should make the following substitutions:

(i) "September 8, 2010" is substituted for "September 10, 2001;"

(ii) "January 1, 2012" is substituted for "May 6, 2003;"

(iii) "December 31, 2011" is substituted for "December 31, 2004;"

(iv) "January 1, 2012" is substituted for "January 1, 2005;"

(v) "December 31, 2012" is substituted for "December 31, 2005;" and

(vi) "January 1, 2013" is substituted for "January 1, 2006."

(b) *Limitation of amount of depreciation for certain passenger automobiles*. For purposes of applying § 1.168(k)–1(f)(8) to passenger automobiles (as defined in § 280F(d)(5)), the limitation under § 280F(a)(1)(A)(i) is increased by $8,000 for a passenger automobile that is eligible for the 100-percent additional first year depreciation deduction.

(2) *Property described in § 168(k)(2)(B)*. For property that is qualified property solely by reason of § 168(k)(2)(B)(i) and that is eligible for the 100-percent additional first year depreciation deduction, only the property's adjusted basis attributable to the manufacture, construction, or production before January 1, 2013, is eligible for the 100-percent additional first year depreciation deduction. Section 168(k)(2)(B)(ii).

(3) *Qualified restaurant property and qualified retail improvement property*. Qualified property that meets the definition of both qualified leasehold improvement property (as defined in §§ 168(e)(6), 168(k)(3), and 1.168(k)–1(c)) and qualified restaurant property (as defined in § 168(e)(7)) or qualified retail improvement property (as defined in § 168(e)(8)) is eligible for the 50-percent or 100-percent additional first year depreciation deduction (assuming all other requirements in § 168(k) are met). For example, if in 2011 a taxpayer constructs and places in service qualified property that is an improvement to a restaurant building and that improvement meets the definition of both qualified restaurant property and qualified leasehold improvement property, the improvement is eligible for the 100-percent additional first year depreciation deduction (assuming all other requirements in § 168(k) are met). However, if in 2011 a taxpayer constructs and places in service a new restaurant building, that building is not qualified leasehold improvement property and is not eligible for any additional first year depreciation deduction.

(4) *Mid-quarter convention*. The depreciable basis (as defined in § 1.168(d)–1(b)(4)) of qualified property that is eligible for any additional first year depreciation deduction is taken

into account in determining whether the mid-quarter convention applies to the property placed in service during the taxable year.

(5) *Coordination with other Code sections*.

(a) *Tax credits and section 1603 payments*. Except for the rehabilitation credit under § 47, the 100-percent additional first year depreciation deduction is determined for qualified property eligible for the 100-percent additional first year depreciation deduction after the reduction to the property's basis by the amount of any credits claimed for the property that require an adjustment to basis (for example, the disabled access credit under § 44 or the energy credit under § 48) or any payments received for specified energy property under § 1603 of the American Recovery and Reinvestment Tax Act of 2009, Division B, Pub. L. 111–5, 123 Stat. 115 (section 1603 payments). For the treatment of the rehabilitation credit and the 100-percent additional first year depreciation deduction, a rule similar to the rule in § 1.168(k)–1(f)(10) applies.

(b) *Application of § 50(d)(5)*. For purposes of applying § 50(d)(5), the shortest recovery period under § 168 that is applicable to qualified property eligible for the 100-percent additional first year depreciation deduction is the recovery period assigned to that property under § 168(c).

(c) *Section 280F(a) limitations on passenger automobiles*.

(i) *In general*. If the unadjusted depreciable basis (as defined in § 1.168(b)–1(a)(3)) of a passenger automobile (as defined in § 280F(d)(5)) that is qualified property eligible for the 100-percent additional first year depreciation deduction exceeds the first year limitation amount under § 280F(a)(1)(A)(i), the excess amount is the unrecovered basis of the passenger automobile for purposes of § 280F(a)(1)(B)(i) and, therefore, is treated as a deductible expense in the first taxable year succeeding the end of the recovery period subject to the limitation under § 280F(a)(1)(B)(ii). For example, if a calendar-year taxpayer places in service in December 2010 a passenger automobile that cost $20,000, is not a truck or van, and is eligible for the 100-percent additional first year depreciation deduction, the 100-percent additional first year depreciation deduction for this property is limited to $11,060 under § 280F(a)(1)(A)(i) (see Table 7 of Rev. Proc. 2011–21, 2011–12 I.R.B. 560) and the excess amount of $8,940 is recovered by the taxpayer beginning in taxable year 2016, subject to the limitation under § 280F(a)(1)(B)(ii).

(ii) *Safe harbor method of accounting*. To mitigate the anomalous result that occurs in the taxable years subsequent to the placed-in-service year and before the first taxable year succeeding the end of the recovery period for a passenger automobile that is qualified property eligible for the 100-percent additional first year depreciation deduction, the Treasury Department and the Service are providing a safe harbor method of accounting under this section 3.03(5)(c)(ii). A taxpayer adopts this safe harbor method of accounting by applying it to deduct depreciation of its passenger automobile (as defined in § 280F(d)(5)) on its federal tax return for the first taxable year succeeding the placed-in-service year of the passenger automobile. For a taxpayer with a passenger automobile that has an unadjusted depreciable basis exceeding the first year limitation amount under § 280F(a)(1)(A)(i) and that is qualified property eligible for the 100-percent additional first year depreciation, the safe harbor method of accounting operates as follows:

(A) In the placed-in-service year of the passenger automobile, the taxpayer will deduct the lesser of the 100-percent additional first year depreciation for the passenger automobile or the first year limitation amount under § 280F(a)(1)(A)(i). See Rev. Proc. 2011–21, 2011–12 I.R.B. 560, for the first year limitation amount under § 280F(a)(1)(A)(i) for a passenger automobile placed in service in 2010 or 2011 if either the 50-percent or 100-percent additional first year depreciation deduction applies.

(B) Next, the taxpayer will determine the unrecovered basis of the passenger automobile for its placed-in-service year as though the taxpayer claimed the 50-percent, instead of the 100-percent, additional first year depreciation for the passenger automobile. For this purpose, the unrecovered basis is equal to the depreciation that would be allowable for the passenger automobile had the taxpayer claimed the 50-percent additional first year depreciation deduction less the amount determined under section 3.03(5)(c)(ii)(A) of this revenue procedure.

(C) If there is any unrecovered basis for the passenger automobile in its placed-in-service year (as determined under section 3.03(5)(c)(ii)(B) of this revenue procedure), the taxpayer will determine the depreciation deductions for the passenger automobile for the taxable years subsequent to the placed-in-service year as though the taxpayer claimed the 50-percent, instead of the 100-percent, additional first year depreciation for the passenger automobile, subject to the limitation amounts under § 280F(a)(1)(A). Accordingly, for purposes of § 1.168(k)–1(d)(2), the remaining adjusted depreciable basis of the passenger automobile is equal to its unadjusted depreciable basis reduced by the amount of the 50-percent additional first year depreciation deemed allowed or allowable, whichever is greater, for the passenger automobile.

(D) If there is no unrecovered basis for the passenger automobile in its placed-in-service year (as determined under section 3.03(5)(c)(ii)(B) of this revenue procedure), the taxpayer will determine the depreciation deduction for the passenger automobile for any 12-month taxable year subsequent to the placed-in-service year by multiplying the adjusted depreciable basis (as defined in § 1.168(b)–1(a)(4)) of the passenger automobile by the applicable depreciation rate for each taxable year (as determined under sections 6.03, 6.04, 6.05, and 6.06 of Rev. Proc. 87–57, 1987–2 C.B. 687, 692). If any taxable year is less than 12 months, the depreciation deduction determined under this section 3.03(5)(c)(ii)(D) must be adjusted for a short taxable year (for further guidance, see Rev. Proc. 89–15, 1989–1 C.B. 816). The taxpayer must not use the optional depreciation tables for computing the depreciation deductions for the passenger automobile. For purposes of determining the applicable depreciation rate, the applicable depreciation method is the method under § 168(b), and the applicable convention is the convention under § 168(d), that would apply in the placed-in-service year for the passenger automobile had the taxpayer claimed the 50-percent additional first year depreciation deduction.

.04 *Examples*.

(1) *Example 1 — Acquired property and self-constructed property not eligible for the 100-percent additional first year depreciation deduction*. In June 2008, X began constructing an electric generation power plant for its own use. In February 2009, prior to the completion of the power plant, X and Y (an unrelated party) entered into a written binding contract under which X transferred the rights to own and use this power plant to Y for $2 million. On March 1, 2009, Y began construction to complete the power plant. Between March 2009 and August 2010, Y incurred another $10 million to complete the construction of the power plant. This $10 million includes amounts for acquired components that were acquired by Y pursuant to written binding contracts entered into after March 1, 2009, and for self-constructed components, the construction, manufacturing, or production of which began after March 1, 2009. Y completed construction of the power plant in August 2010. On October 1, 2010, Y placed the power plant in service. The power plant is included in asset class 49.13 of Rev. Proc. 87–56, 1987–2 C.B. 674, and has a recovery period of 20 years under § 168(c).

First, Y must determine if the power plant is qualified property and if its components are qualified property. Y acquired the $2 million portion of the total $12 million unadjusted depreciable basis pursuant to a written binding contract entered into after December 31, 2007. Further, Y began construction to complete the power plant after December 31, 2007, and all of its components were self-constructed beginning, or acquired pursuant to written binding contracts entered into, after December 31, 2007. Also, the original use of the power plant began with Y after December 31, 2007, and Y placed the power plant in service before January 1, 2014 (the power plant is property described in § 168(k)(2)(B)). Thus, the power plant is qualified property and all of its components are qualified property.

Y must next determine if the power plant and any of its components are eligible for the 100-percent additional first year depreciation deduction. Because X and Y are not related parties, the transaction between X and Y will not be a disqualified transaction pursuant to § 1.168(k)–1(b)(4)(iv), as modified by section 3.02(3) of this revenue procedure. Although the original use of the power plant began with Y after September 8, 2010, and Y placed the power plant in service after September 8, 2010, and before January 1, 2013 (the power plant is property described in § 168(k)(2)(B)), the power plant does not meet the acquisition rule in § 168(k)(5) and section 3.02(1)(a) of this revenue procedure. Y acquired the $2 million portion of the total $12 million unadjusted depreciable basis before September 9, 2010. Further, Y began construction to complete the power plant before September 9, 2010, and Y acquired or self-constructed all of the components to complete the construction of the power plant before September 9, 2010. Accordingly, Y's total expenditures of $12 million for the power plant do not qualify for the 100-percent additional first year depreciation deduction. Instead, Y's total expenditures of $12 million for the power plant qualify for the 50-percent additional first year depreciation deduction.

(2) *Example 2 — Acquired property and self-constructed property partially eligible for the 100-percent additional first year depreciation deduction*. In August 2009, X began constructing an electric generation power plant for its own use. On September 1, 2010, prior to the completion of the power plant, X and Y (an unrelated party) entered into a written binding contract and X transferred the rights to own and use this power plant to Y for $5 million. On September 15, 2010, Y began construction to complete the power plant. Between September 15, 2010, and November 2011, Y incurred another $10 million to complete the construction of the power plant. This $10 million includes amounts for acquired components that were acquired by Y after September 15, 2010, and for self-constructed components, the construction, manufacturing, or production of which began after September 15, 2010. All acquired components to complete the construction of the power plant were acquired by Y pursuant to written binding contracts entered into after September 1, 2010. Y completed construction of the power plant in November 2011. On December 15, 2011, Y placed the power plant in service. The power plant is included in asset class 49.13 of Rev. Proc. 87–56, and has a recovery period of 20 years under § 168(c).

First, Y must determine if the power plant is qualified property and if its components are qualified property. Y acquired the $5 million portion of the total $15 million unadjusted depreciable basis pursuant to a written binding contract entered into after December 31, 2007. Further, Y began construction to complete the power plant after December 31, 2007, and all of its components were self-constructed beginning, or acquired pursuant to written binding contracts entered into, after December 31, 2007. Also, the original use of the power plant began with Y after December 31, 2007, and Y placed the power plant in service before January 1, 2014 (the power plant is property described in § 168(k)(2)(B)). Thus, the power plant and its components are qualified property.

Y must next determine if the power plant and any of its components are eligible for the 100-percent additional first year depreciation deduction. X and Y are not related parties; therefore, the transaction between X and Y will not be a disqualified transaction pursuant to § 1.168(k)–1(b)(4)(iv), as modified by section 3.02(3) of this revenue procedure. Although the original use of the power plant began with Y after September 8, 2010, and Y placed the power plant in service after September 8, 2010, and before January 1, 2013 (the power plant is property described in § 168(k)(2)(B)), not all of Y's total expenditures of $15 million qualify for the 100-percent additional first year depreciation deduction. Given that Y acquired the $5 million portion of the total $15 million unadjusted depreciable basis before September 9, 2010, that portion qualifies only for the 50-percent additional first year depreciation deduction. However, because Y began construction to complete the power plant after September 8, 2010, and Y acquired or began self-constructing all of the components to complete the construction of the power plant after September 8, 2010, the $10 million portion of the total $15 million unadjusted depreciable basis qualifies for the 100-percent additional first year depreciation deduction.

(3) *Example 3 — Component election made*. X, a calendar-year taxpayer, began constructing a ship for its own use in March 2010. Between March 2010 and June 2012, X incurred $25 million to complete the construction of the ship. This $25 million includes $15 million for acquired components that were acquired by X after September 8, 2010, and before January 1, 2013, and for self-constructed components, the construction, manufacturing, or production of which began after September 8, 2010, and before January 1, 2013 (the ship is property described in § 168(k)(2)(B)). All acquired components of the ship were acquired by X pursuant to written binding contracts entered into after March 2010. The original use of all components of the ship commences with X. X completed construction of the ship in June 2012, and placed it in service in August 2012. On its 2012 federal tax return, X makes the election provided under section 3.02(2)(b) of this revenue procedure. The ship is included in asset class 00.28 of Rev. Proc. 87–56, and has a recovery period of 10 years under § 168(c).

First, X must determine if the ship is qualified property and if its components are qualified property. X began construction of the ship after December 31, 2007, and all of its components were self-constructed beginning, or acquired pursuant to written binding contracts entered into, after December 31, 2007. Also, the original use of the ship began with X after December 31, 2007, and X placed the ship in service before January 1, 2014 (the ship is property described in § 168(k)(2)(B)). Thus, the ship and its components are qualified property.

X must next determine if the ship and any of its components are eligible for the 100-percent additional first year depreciation deduction. Although the original use of the ship began with X after September 8, 2010, and X placed the ship in service after September 8, 2010, and before January 1, 2013 (the ship is property described in § 168(k)(2)(B)), not all of X's total expenditures of $25 million qualify for the 100-percent additional first year depreciation deduction. X began construction of the ship before September 9, 2010, but made the election provided under section 3.02(2)(b) of this revenue procedure. As a result, the $15 million portion (of the total $25 million unadjusted depreciable basis for the ship) incurred for the components that were acquired or self-constructed by X after September 8, 2010, and before January 1, 2013, qualifies for the 100-percent additional first year depreciation deduction. The remaining $10 million portion of the total $25 million unadjusted depreciable basis qualifies only for the 50-percent additional first year depreciation deduction.

(4) *Example 4 — Component election not made*. The facts are the same as in *Example 3*, except X did not make the election provided under section 3.02(2)(b) of this revenue procedure on its 2012 federal tax return. As a result, X's total expenditures of $25 million for the ship do not qualify for the 100-percent additional first year depreciation deduction. Although the original use of the ship began with X after September 8, 2010, and X placed the ship in service after September 8, 2010, and before January 1, 2013 (the ship is property described in § 168(k)(2)(B)), the ship does not meet the acquisition rule in § 168(k)(5) and section 3.02(1)(a) of this revenue procedure because X began construction of the ship before September 9, 2010. Accordingly,

X's total expenditures of $25 million for the ship qualify only for the 50-percent additional first year depreciation deduction.

(5) *Example 5 — Application of § 280F(a) safe harbor method of accounting when there is unrecovered basis*. In December 2010, X, a calendar-year taxpayer, purchased and placed in service for use in its business a new passenger automobile that cost $20,000. The passenger automobile is not a truck or van, is 5-year property under § 168(e), and is eligible for the 100-percent additional first year depreciation deduction. X does not claim any § 179 deduction for the passenger automobile. For 2010, X deducts $11,060 for the 100-percent additional first year depreciation for this property, which is the depreciation limitation for 2010 under § 280F(a)(1)(A)(i) (see Table 7 in Rev. Proc. 2011–21). X adopts the safe harbor method of accounting provided in section 3.03(5)(c)(ii) of this revenue procedure.

Under the safe harbor method of accounting, X is deemed to have claimed the 50-percent additional first year depreciation deduction for purposes of determining the unrecovered basis and the remaining adjusted depreciable basis of the passenger automobile. Accordingly, for 2010, the total depreciation allowable for the passenger automobile is deemed to be $12,000 [(50 percent multiplied by unadjusted depreciable basis of $20,000) + (20 percent multiplied by the remaining adjusted depreciable basis of $10,000)]. Thus, the unrecovered basis for the passenger automobile for 2010 is $940 ($12,000 deemed depreciation allowable less the $11,060 depreciation deduction for 2010) and that amount is recovered by X beginning in the 2016 taxable year, subject to the limitation under § 280F(a)(1)(B)(ii).

For 2011, the total depreciation allowable for the passenger automobile is deemed to be $3,200 (32 percent multiplied by the remaining adjusted depreciable basis of $10,000). Because this amount is less than the depreciation limitation of $4,900 for 2011 (see Table 7 in Rev. Proc. 2011–21), X deducts $3,200 as depreciation on its federal income tax return for the 2011 taxable year.

(6) *Example 6 — Application of § 280F(a) safe harbor method of accounting when there is no unrecovered basis*. The facts are the same as in *Example 5*, except the cost of the passenger automobile is $18,400. For 2010, X deducts $11,060 for the 100-percent additional first year depreciation for this property, which is the depreciation limitation for 2010 under § 280F(a)(1)(A)(i) (see Table 7 in Rev. Proc. 2011–21).

Under the safe harbor method of accounting, X is deemed to have claimed the 50-percent additional first year depreciation deduction for purposes of determining the unrecovered basis and the remaining adjusted depreciable basis of the passenger automobile. As a result, for 2010, the total depreciation allowable for the passenger automobile is deemed to be $11,040 [(50 percent multiplied by unadjusted depreciable basis of $18,400) + (20 percent multiplied by the remaining adjusted depreciable basis of $9,200)]. Thus, there is no unrecovered basis for the passenger automobile for 2010 because the 2010 deemed depreciation allowable of $11,040 is less than the 2010 depreciation deduction of $11,060.

Pursuant to section 3.03(5)(c)(ii)(D) of this revenue procedure, X must not use the optional depreciation tables for computing the depreciation deductions for the passenger automobile for the taxable years subsequent to the placed-in-service year. Therefore, assuming the applicable depreciation method and convention for the passenger automobile is the 200-percent declining balance method and the half-year convention, respectively, the total depreciation allowable for the passenger automobile for 2011 is $2,936 (40 percent multiplied by the adjusted depreciable basis of $7,340 [unadjusted depreciable basis of $18,400 less the total depreciation allowable for prior taxable years of $11,060]). Because this amount is less than the depreciation limitation of $4,900 for 2011 (see Table 7 in Rev. Proc. 2011–21), X deducts $2,936 as depreciation on its federal income tax return for the 2011 taxable year.

SECTION 4. ELECTION NOT TO DEDUCT ADDITIONAL FIRST YEAR DEPRECIATION

.01 *In General*. The election under § 168(k)(2)(D)(iii) not to deduct additional first year depreciation for a class of property applies to all qualified property that is in that class of property and placed in service in the same taxable year. *See* § 1.168(k)–1(e)(1). For example, if a calendar-year taxpayer for its taxable year ending December 31, 2010, makes the election not to deduct additional first year depreciation for 5-year property, all 5-year property placed in service by the taxpayer during its 2010 taxable year is not qualified property under § 168(k)(2) and, therefore, is not eligible for the 50-percent or the 100-percent additional first year depreciation deduction for the 2010 taxable year. However, see section 4.02 of this revenue procedure for a limited exception.

.02 *Limited Exception*. The Treasury Department and the Service recognize that a taxpayer may have difficulty determining the exact date during a month on which the taxpayer acquires and places in service property. To minimize disputes regarding whether a taxpayer acquired or placed in service particular property after September 8, 2010, the Treasury Department and the Service will allow a taxpayer to elect to deduct the 50-percent, instead of the 100-percent, additional first year depreciation for all qualified property that is in the same class of property and placed in service by the taxpayer in its taxable year that includes September 9, 2010, provided the taxpayer does not make an election not to deduct additional first year depreciation for that class of property for that taxable year under § 168(k)(2)(D)(iii) or section 5.04 of this revenue procedure. If the taxpayer makes the election under this section 4.02, the allowable additional first year depreciation deduction is determined for the class of property based on the 50-percent additional first year depreciation deduction. For example, if a calendar-year taxpayer for its taxable year ending December 31, 2010, placed in service 5-year property before September 9, 2010, and other 5-year property after September 8, 2010, the taxpayer may elect to claim the 50-percent additional first year depreciation for all of its 5-year property that is qualified property and placed in service during the 2010 taxable year.

.03 *Time and Manner for Making Election*. The election specified in section 4.02 of this revenue procedure must be made by the due date (including extensions) of the federal tax return for the taxpayer's taxable year that includes September 9, 2010, and must be made in the same manner as the § 168(k)(2)(D)(iii) election is made. *See* § 1.168(k)–1(e)(3). If a taxpayer has timely filed its federal tax return for the taxpayer's taxable year that includes September 9, 2010, on or before April 18, 2011, see § 301.9100–2(b) of the Procedure and Administration Regulations for an automatic extension of 6 months from the due date of that federal return (excluding extensions) to make the election specified in section 4.02 of this revenue procedure.

SECTION 5. SBJA RETROACTIVE APPLICATION OF 50-PERCENT ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION

.01 *Scope*. This section 5 applies to a taxpayer that did not claim the 50-percent additional first year depreciation for some or all qualified property placed in service by the taxpayer after December 31, 2009, on its federal tax return for its taxable year beginning in 2009 and ending in 2010 (2009 taxable year) or its taxable year of less than 12 months beginning and ending in 2010 (2010 short taxable year). For purposes of this section 5:

(1) Except as provided in section 5.04(3) of this revenue procedure, the term "qualified property" has the same meaning as provided in § 168(k)(2) before the enactment of the TRUIRJCA;

(2) The term "2009 qualified property" means qualified property placed in service by the taxpayer before January 1, 2010, in its 2009 taxable year; and

(3) The term "2010 qualified property" means qualified property placed in service by the taxpayer after December 31, 2009, in its 2009 taxable year or 2010 short taxable year, as applicable.

.02 *No Election Made To Not Deduct 50-Percent Additional First Year Depreciation*. If a taxpayer timely filed its federal tax return for the 2009 taxable year or the 2010 short taxable year, as applicable, did not deduct on that return the 50-percent additional first year depreciation for a class of property that is qualified property or for some or all of its 2010 qualified property, and did not make an election within the time and in the manner described in either section 2.06 or section 5.04(2) of this revenue procedure not to deduct the 50-percent additional first year depreciation for the class of property in which the qualified property or the 2010 qualified property, as applicable, is included, the taxpayer may claim the 50-percent additional first year depreciation for that property by filing either:

(1) An amended federal tax return (or a qualified amended return under Rev. Proc. 94–69, 1994–2 C.B. 804 (or its successor), if applicable) for the 2009 taxable year or the 2010 short taxable year, as applicable, before the taxpayer files its federal tax return for the first taxable year succeeding the 2009 taxable year or the 2010 short taxable year, as applicable; or

(2) A Form 3115, *Application for Change in Accounting Method*, under section 6.01 of the Appendix of Rev. Proc. 2011–14, 2011–4 I.R.B. 330, 361, with the taxpayer's timely filed federal tax return for the first or second taxable year succeeding the 2009 taxable year or the 2010 short taxable year, as applicable, if the taxpayer owns the property as of the first day of the year of change (as defined in section 3.06 of Rev. Proc. 2011–14).

.03 *Consent Granted to Revoke Election to Not Deduct 50-Percent Additional First Year Depreciation*. If, on its timely filed federal tax return for the 2009 taxable year or the 2010 short taxable year, as applicable, a taxpayer made an election within the time and in the manner described in section 2.06 of this revenue procedure to not deduct the 50-percent additional first year depreciation for a class of property that is qualified property, the Commissioner grants the taxpayer consent to revoke that election, provided the taxpayer files an amended federal tax return for the 2009 taxable year or the 2010 short taxable year, as applicable, in a manner that is consistent with the revocation of the election and by the later of (1) June 17, 2011, or (2) before the taxpayer files its federal tax return for the first taxable year succeeding the 2009 taxable year or the 2010 short taxable year.

.04 *Election To Not Deduct 50-Percent Additional First Year Depreciation*.

(1) *In general*. A taxpayer that timely filed its federal tax return for the 2009 taxable year or the 2010 short taxable year, as applicable, has made the election to not deduct the 50-percent additional first year depreciation for a class of property that is qualified property if the taxpayer made the election within the time and in the manner provided in section 2.06 of this revenue procedure and did not revoke that election within the time and in the manner provided in section 5.03 of this revenue procedure.

(2) *Deemed election*. If section 5.04(1) of this revenue procedure does not apply, a taxpayer that timely filed its federal tax return for the 2009 taxable year or the 2010 short taxable year, as applicable, also will be treated as making the election to not deduct the 50-percent additional first year depreciation for a class of property that is qualified property if the taxpayer:

(a) on that return, did not deduct the 50-percent additional first year depreciation for that class of property but did deduct depreciation; and

(b) does not file an amended federal tax return (or a qualified amended return) or a Form 3115 within the time and in the manner provided in section 5.02 or section 5.03 of this revenue procedure, as applicable, to claim the 50-percent additional first year depreciation for the class of property.

(3) *Application*. If the taxpayer makes the election under section 5.04(1) or (2) of this revenue procedure for its 2009 taxable year, the election applies to both 2009 qualified property and 2010 qualified property in the same class of property for which the election is made. If the taxpayer makes the election under section 5.04(1) or (2) of this revenue procedure for its 2010 short taxable year, the election applies to 2010 qualified property in the same class of property for which the election is made. The election under section 5.04(1) or (2) of this revenue procedure also applies to qualified property (as defined in § 168(k), as amended by the SBJA and the TRUIRJCA) in that class of property that is eligible for the 100-percent additional first year depreciation deduction and placed in service during the taxpayer's 2009 taxable year or 2010 short taxable year, as applicable, and, therefore, this property is not eligible for the 50-percent or 100-percent additional first year depreciation deduction.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2011–21 is amplified as provided in section 3.03(5)(c) of this revenue procedure.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective March 29, 2011.

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 1545–2207.

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 3.02(2)(b) and 4.03. This information is required to make the elections provided under these sections. This information will be used by the Service for examination purposes. The collections of information are required to obtain a benefit. The likely respondents are individuals, business or other for-profit institutions, and small businesses.

The estimated total annual reporting burden is 125,000 hours.

The estimated annual burden per respondent varies from .25 hours to 1 hour, depending on individual circumstances, with an estimated average of .5 hours. The estimated number of respondents is 250,000.

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 return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Kathleen Reed of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding the additional first year depreciation deduction, contact Douglas Kim at (202) 622–4930 (not a toll-free call). For further information regarding the depreciation deduction limitations under § 280F(a), contact Bernard P. Harvey at (202) 622–4930 (not a toll-free call).