

SUPPORTING STATEMENT
OMB Control Number 1545-XXXX

Revenue Procedure 2017-XX, Sections 168(k)(5)
and (j)(8) Election Procedures

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 143(b) of the Protecting Americans from Tax Hikes Act of 2015 (the “PATH Act”) amends section 168(k) of the Internal Revenue Code (the “Code”) by adding new section 168(k)(5), which allows a taxpayer to elect to deduct the additional first year depreciation for certain plants bearing fruits and nuts before such plants are placed in service. Section 167(b) of the PATH Act amends section 168(j) of the Code by adding new section 168(j)(8), which allows a taxpayer to elect not to apply section 168(j) for any class of qualified Indian reservation property.

This revenue procedure provides the time and manner for (1) farmers of plants bearing fruits and nuts to make the election to apply section 168(k)(5) of the Code, and (2) taxpayers to make the election to apply section 168(j)(8) of the Code.

2. USE OF DATA

The information will be used by revenue agents to determine if (1) the farmer is entitled to claim the additional first year depreciation for certain plants bearing fruits and nuts before such plants are placed in service, and (2) taxpayers that make the election to apply section 168(j)(8) are properly determining depreciation.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

There are no methods to minimize burden on small businesses or other small entities.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Consequences of less frequent collection on federal programs or policy activities would result in farmers filing fraudulent returns that are not entitled to claim the additional first year depreciation allowed as a result of making the election to apply section 168(j)(8) are properly determining depreciation.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collections to be inconsistent with Guidelines in 5 CFR

1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

We will publish a notice in the *Federal Register* in the near future to solicit public comments on this revenue procedure.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collections of information are in sections 4.05 and 5.03 of this revenue procedure. This information is required to make the elections provided under §§ 168(j)(8) and 168(k)(5) of the Code. This information will be used to verify that the taxpayer is determining depreciation properly for the assets for which the elections are made. The estimated total annual burden is 48,750 hours. The estimated annual burden per respondent varies from .25 to 1 hour, depending on individual circumstances, with an estimated average of 0.75 hours. The estimated number of respondents is 65,000.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information are associated with this information collection.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no estimated annualized cost to the federal government.

15. REASON FOR CHANGE IN BURDEN

This is a new collection; this form is being submitted for an OMB number.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical, analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the revenue procedure sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

There are no exceptions to the certification statement for this collection.

Note: The following paragraph applies to all of the collections of information in this submission:

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. 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.

Note: This is an emergency submission.

We are requesting emergency review of this submission and seek OMB approval by January 31, 2017. The new sections 168(k)(5) and 168(j)(8) of the Code are part of the Protecting Americans from Tax Hikes Act of 2015 (the "PATH Act"), enacted on December 18, 2015. Because Congress introduced bills making technical corrections to both new sections, we could not issue guidance until it became clear on December 9, 2016, that such bills would not be acted upon by this Congress.

Section 168(k)(5) was enacted to stimulate the economy. It applies only to farmers who plant or graft plants bearing nuts and fruits. It encourages these farmers to do that activity by, beginning in 2016, allowing them to make an election to deduct 50-percent additional first year depreciation to recover their planting and grafting costs in the planting or grafting year, rather than delaying cost recovery until the first year of production. Farmers who are planning to make this election will be unable to do so unless guidance is available before January 23, 2017, the first day of the filing season for the 2016 tax returns. Similarly, section 168(j)(8) applies to taxpayers that, in 2016, purchase buildings and equipment for their businesses within Indian reservations. Taxpayers who are planning to make the election under new section 168(j)(8) also will be unable to do so unless guidance is available before January 23, 2017.

Therefore, we respectfully request that the consideration of this submission and provision of an OMB number be completed by January 31, 2017. Any other result will be detrimental to the taxpaying public and will interfere with the mission of the IRS.