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# New Safe Harbor for First-Year Additional Depreciation of High Cost Vehicles

-by Robert P. Achenbach, Jr.

The Tax Cut and Jobs Act of 2017 (TCJA 2017),[1] extended the additional (also referred to as "bonus") first-year depreciation deduction for qualified property acquired and placed in service after September 27, 2017, and before January 1, 2027.[2] This article focuses on the limitations on additional depreciation deductions for high-cost passenger vehicles[3] and a new safe harbor provided by the IRS to guide taxpayers who elect use of the additional first-year depreciation deduction.[4]

**Depreciation Limits on Passenger Vehicles**

I.R.C. § 208F(1), as amended by the TCJA 2017, imposes dollar limitations on the depreciation deduction for the year the taxpayer places a passenger automobile (other than a leased vehicle) in service and for each succeeding year. Without application of the first-year additional depreciation, the 2018 limits are:[5]

| Tax Year | Depreciation Limitation |
|---|---|
| 1st tax year | $10,000 |
| 2d tax year | $16,000 |
| 3d tax year | $9,600 |
| Each succeeding year | $5,760 |

For a passenger automobile that is qualified property[6] and for which the 100-percent additional first year depreciation deduction is allowable, the TCJA 2017 increases only the first year limitation amount[7] by $8,000.[8] Thus, after application of the first-year additional depreciation the deduction limitations for 2018 are:[9]

| Tax Year | Depreciation Limitation |
|---|---|
| 1st tax year | $18,000 |
| 2d tax year | $16,000 |
| 3d tax year | $9,600 |
| Each succeeding year | $5,760 |

**Non-Safe Harbor rule**

Prior to the safe harbor rule, if the unadjusted depreciable basis of a passenger automobile for which the 100-percent additional first year depreciation deduction is allowable exceeds the first year limitation amount, the excess amount is the unrecovered basis of the passenger automobile and is treated as a deductible expense in the first taxable year succeeding the end of the recovery period subject to the limitation under I.R.C. § 280F(a)(1)(B)(ii) ($5,760 for 2018). *Rev. Proc. 2019-13*[10] provides the following example:

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*Example*: If a calendar-year taxpayer places in service in December 2018 a passenger automobile that costs $50,000 and is qualified property for which the 100-percent additional first year depreciation deduction is allowable, the 100-percent additional first year depreciation deduction and any I.R.C. § 179 deduction for this property is limited to $18,000 under I.R.C. § 280F(a)(1)(A)(i) and the excess amount of $32,000 is recovered by the taxpayer beginning in 2024, subject to the annual limitation of $5,760 under I.R.C. § 280F(a)(1)(B)(ii).

**Safe Harbor Procedure**

The safe harbor allows the taxpayer to claim depreciation deductions for each year of the vehicle's recovery period instead of delaying the deductions until after the recovery period.

The safe harbor can be applied to a passenger automobile (other than a leased passenger automobile): (1) that is acquired and placed in service by the taxpayer after September 27, 2017; (2) that is qualified property under I.R.C. § 168(k) for which the 100-percent additional first year depreciation deduction is allowable; (3) that has an unadjusted depreciable basis exceeding the first year limitation amount under I.R.C. § 280F(a)(1)(A)(i); and (4) for which the taxpayer did not elect to treat the cost or a portion of the cost as an expense under I.R.C. § 179.[11]

The taxpayer must use the applicable optional depreciation table for computing the depreciation deductions for the passenger automobile.[12]

For the placed-in-service year of the passenger automobile, the taxpayer deducts the first year limitation amount.[13]

For the 12-month taxable year subsequent to the placed-in-service year and for each succeeding 12-month taxable year in the recovery period, the taxpayer determines the depreciation deduction for the passenger automobile by multiplying the remaining adjusted depreciable basis of the passenger automobile by the annual depreciation rate for each taxable year subsequent to the placed-in-service year specified in the applicable optional depreciation table, still subject to the limitation amounts under I.R.C. § 280F(a)(1)(A).

Any left over adjusted depreciable basis of the passenger automobile as of the beginning of the first taxable year succeeding the end of the recovery period is treated as a deductible depreciation expense for the first taxable year succeeding the end of the recovery period, again subject to the limitation under §280F(a)(1)(B)(ii). Any excess is treated as a deductible depreciation expense for the succeeding taxable years, subject to the limitation under I.R.C. § 280F(a)(1)(B)(ii).

If I.R.C. § 280F(b) applies to the passenger automobile in a taxable year subsequent to the placed-in-service year, the safe harbor method of accounting ceases to apply beginning for the first year in which I.R.C. § 280F(b) applies.[14]

*Rev. Proc. 2019-13*[15] provides the following example:

*Example*: In 2018, a calendar-year taxpayer, purchased and placed in service for use in its business a new passenger automobile that costs $60,000. The passenger automobile is 5-year property under I.R.C. § 168(e), is qualified property under I.R.C. § 168(k) for which the 100-percent additional first year depreciation deduction is allowable, and is used 100 percent in the taxpayer's trade or business. The taxpayer does not claim a I.R.C. § 179 deduction for the passenger automobile and does not make an election under I.R.C. § 168(b), (g)(7), or (k). The taxpayer depreciates the passenger automobile under the general depreciation system by using the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. The taxpayer adopts the safe harbor method of accounting.

The following table calculates the annual depreciation deduction allowed under the safe harbor:

| Taxable year | Depreciation limitations under Rev. Proc. 2018-25 | Depreciation deduction under the safe harbor |
|---|---|---|
| 2018 | $18,000 | $18,000 |
| 2019 | $16,000 | $13,440 ($42,000 x .32) |
| 2020 | $9,600 | $8,064 ($42,000 x .1920) |
| 2021 | $5,760 | $4,838 ($42,000 x .1152) |
| 2022 | $5,760 | $4,838 ($42,000 x .1152) |
| 2023 | $5,760 | $2,419 ($42,000 x .0576) |
| | Total basis deducted | $51,599 |
| | Left over basis | $8,401 |
| 2024 | $5,760 | $5,760 |
| 2025 | $5,760 | $2,641 |

**Making the Safe Harbor Election**

The election to use the safe harbor is made by claiming the correct depreciation for the second tax year under the safe harbor rules, since the depreciation allowed under the safe harbor and non-safe harbor rules is the same.

**ENDNOTES**

[1] Pub. L. No. 115-97, § 13201, 131 Stat. 2105 (2017).

[2] I.R.C. § 168(k)(1), as amended, provides that, in the case of qualified property, the depreciation deduction allowed under I.R.C. § 167(a) for the taxable year in which the property is placed in service includes an allowance equal to the applicable percentage of the property's adjusted basis. Pursuant to amended I.R.C. § 168(k)(6)(A), the applicable percentage is 100-percent for qualified property acquired and placed in service after September 27, 2017, and placed in service before January 1, 2023. The applicable percentage is phased down by 20 percentage points each year for qualified property placed in service after December 31, 2022, through December 31, 2026. See Achenbach, "New Proposed Regulations On Bonus' Depreciation, 29 Agric. L. Dig. 145 (2018); Harl & Achenbach, Agricultural Law, § 29.03[11][b] (2018).

[3] Passenger automobile is defined in I.R.C. § 280F(d)(5).

[4] Rev. Proc. 2019-13, I.R.B 2019-9. Query whether this is a safe harbor or actually a new additional first-year depreciation schedule for qualified passenger vehicles.

[5] Rev. Proc. 2018-25, I.R.B. 2018-18, 543.

[6] See I.R.C. § 168(k).

[7] See I.R.C. § 280F(a)(1)(A)(i). See Rev. Proc. 2018-25, I.R.B. 2018-18, 543, which provides the dollar limitation amounts provided in I.R.C. § 280F(a)(1)(A)(i) that apply to passenger automobiles first placed in service by the taxpayer during calendar year 2018.

[8] I.R.C. § 168(k)(2)(F)(i).

[9] *Id*. Note: I.R.C. § 280F(d)(1) provides that any deduction

allowable under I.R.C. § 179 (expense method depreciation) for a passenger automobile is subject to the limitations of I.R.C. § 280F(a) in the same manner as if it were a depreciation deduction allowable under I.R.C. § 168.

[10] I.R.B. 2019-9.

[11] Rev. Proc. 2019-13, I.R.B. 2019-9.

[12] The applicable optional depreciation table is based on the depreciation system, depreciation method, recovery period, and convention applicable to the passenger automobile for its placed-in-service year, as provided in *Rev. Proc. 87-57, 1987-2 C.B. 687*. The applicable optional depreciation tables are published in Appendix A of IRS Publication 946.

[13] For a passenger automobile placed in service after 2018, further guidance will be issued to provide the limitation amounts under I.R.C. § 280F(a)(1) for the applicable placed-in-service year.

[14] Any passenger automobile that is not predominantly used in a qualified business use, as defined in I.R.C. § 280F(d)(6)(B) and (C), for any taxable year is subject to §280F(b) for such taxable year and any subsequent taxable year.

[15] I.R.B. 2019-9.

# CASES, REGULATIONS AND STATUTES

## BANKRUPTCY

### CHAPTER 12

**CLAIMS**. The debtor filed for Chapter 12 in December 2017 and timely filed all bankruptcy schedules, including Form 106D, Schedule D: *Creditors Who Have Claims Secured by Property*. However, the address for one creditor was incorrect and that creditor did not receive a notice of the bankruptcy filing. The debtor's counsel received notice of the address error but did not correct the error or otherwise give proper notice to the creditor. Thus, the creditor failed to timely file a proof of claim until more than two weeks after the deadline for filing a proof of claim. The debtor timely filed a plan and a modified plan was eventually confirmed after the trustee's objections were negotiated. The plan provided for full payment of the creditor's claims over the life of the plan. The trustee did not raise the issue of the creditor's proof of claim prior to confirmation of the plan. However, one month after the confirmation of the plan, the trustee objected to the plan, arguing that the creditor's claims were untimely filed. The debtor and creditor argued that avoiding the untimely filed claims would endanger the successful reorganization of the debtor's farm in that the creditor would be forced to foreclose on the collateral equipment which was needed to operate the farm. The creditor sought an extension of time to file its proof of claim and the debtor sought an extension of time for the debtor to include the proof of claim. Under Section 502(b)(9) a claim may be disallowed if untimely filed. Bankruptcy Rule 3002(c) provides that, for non-governmental creditors in a chapter 12 case, proofs of claim must be filed not later than 70 days after the order for relief, subject to seven limited exceptions. Under Rule 9006(b)(1), the court can generally extend a deadline "for cause," if the party seeking the extension asks before the applicable deadline expires. If the deadline has passed before the request, Rule 9006(b)(1) permits an extension of a deadline only if the moving party establishes "excusable neglect." The court looked at four factors for finding excusable neglect: (1) prejudice to the opposing party; (2) the length of delay and potential impact on proceedings; (3) the reason for the delay, including whether it was in the reasonable control of the movant; and (4) the movant's good faith. The court found that the debtor was not entitled to an extension because the delay was caused by the debtor's own actions in failing to use the correct address and failing to timely correct the error once known. Rule 3002(c)(6) allows a creditor an extension of up to 60 days to file a claim if (1) the debtor fails to timely file a list of creditors names and addresses or (2) the debtor filed an insufficient notice and the notice was sent to a foreign address. The court found that neither condition was present in this case because the debtor did timely file a list of creditors and the bankruptcy notice was not sent to a foreign address. Thus, the court held that the debtor's and creditor's requests for extensions of time to file the creditor's proof of claim were denied. However, the court looked at the effect of the failure of the trustee to object to the creditor's claim during the plan confirmation process, noting that the trustee approved of the plan for confirmation. The court cited *United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260 (2010)*, which held that an order confirming a plan is entitled to *res judicata* effect even when based on legal error. Thus, the court held that the trustee was estopped from objecting to the plan and its inclusion of the creditor's claims. ***In re* Wulff, 2019 Bankr. LEXIS 388 (Bankr. E.D. Wis. 2019)**.

## FEDERAL ESTATE AND GIFT TAXATION

**IRA**. The decedent had created a living revocable trust for the benefit of the surviving spouse, which became irrevocable upon the decedent's death. The trust contained a subtrust for holding any benefits or distributions from the decedent's retirement plans, including any IRA. The IRA named the trust as the designated beneficiary. The trust provided that any distributions made from the IRA would be immediately passed on to the surviving spouse. Upon the death of the surviving spouse, any remaining benefits or distributions passed to the decedent's children and descendants.