

Taxpayers may continue to accelerate certain AMT credits

April 2, 2013

In brief

Corporations or consolidated groups with alternative minimum tax (AMT) credits from pre-2006 tax years may continue to accelerate use of these credits instead of claiming Section 168(k) additional bonus depreciation for eligible qualified property. To accelerate use of these credits, an election must be made under Section 168(k)(4). This provision has proven particularly useful for companies with excess AMT credits that do not benefit from claiming bonus depreciation.

Note: Please refer to the diagram below for a timeline containing a summary of the applicable dates for original, extension, round 2 extension, and round 3 extension property (each a 'Section 168(k)(4) period', collectively 'Section 168(k)(4) periods').

In detail

Background

A corporation may elect under Section 168(k)(4) to forgo its 'bonus' depreciation with respect to 2008-2009 or 2011-2013 eligible qualified property placed in service after March 31, 2008. As a result, a corporation may increase its Section 38(c) general business credit limitation and its Section 53(c) prior-year AMT limitation by its bonus depreciation amount for 'original' and 'extension' property (generally property placed in service during and after the first tax year ending after March 31, 2008, through December 31, 2009).

For further discussion of 'extension' property, see WNTS Insight, ["Monetization of AMT,"](#)

[research credits: One-year extension, IRS guidance,"](#) February 20, 2009.

The benefit to increase a corporation's general business credit and prior-year AMT limitation was unavailable for 2010 (except for qualifying long production period property and certain aircraft), but was reinstated in The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the Act). The Act generally extends Section 168(k)(4) to qualified property placed in service in 2011 and 2012 ('round 2 extension property'). In addition, the American Taxpayer Relief Act of 2012 (ATRA) generally extends Section 168(k)(4) to qualified property placed in service in

2013 ('round 3 extension property'). The provisions for rounds 2 and 3 extension property only allow the acceleration AMT credits, but are otherwise similar to the provisions for original and extension property.

Note: The applicable placed-in-service years are extended by one year for certain aircraft and long production period property subject to the extended bonus depreciation placed-in-service requirement.

A taxpayer may make two different elections to forgo bonus depreciation under Section 168(k). The first election is the Section 168(k)(2)(D)(iii) election not to apply the provisions of Section

168(k). This election is made on an entity-by-entity and class-by-class basis (e.g., all five-year property of one subsidiary in a consolidated group could elect out of bonus depreciation).

The second election is the Section 168(k)(4) election to accelerate research credits or AMT credits in lieu of claiming bonus depreciation. This election is applicable to all property of a controlled group of corporations (generally determined by greater-than-50-percent ownership) that meets the requirements of Section 168(k). The IRS has provided that an election out of bonus depreciation pursuant to Section 168(k)(2)(D)(iii) is taken into account before an election to accelerate research credits or AMT credits under Section 168(k)(4).

Observation

Taxpayers that wish to file an election not to claim bonus depreciation for a specific class of property may do so by

electing Section 168(k)(2)(D)(iii). This election is applied first and any class of property for which this election has been made is not eligible qualified property (EQP) — that is, property eligible for bonus depreciation — under Section 168(k)(4). Thus, a taxpayer may control the property that is subject to its election to accelerate AMT credits through its Section 168(k)(2)(D)(iii) election to exclude property from the application of Section 168(k).

Round 2 extension property

Under Section 168(k)(4)(I)(iv), 'round 2 extension property' is property that constitutes EQP solely because of the Act's extension of bonus depreciation. EQP is considered round 2 extension property if it is placed in service by the taxpayer after December 31, 2010, and before January 1, 2013. For round 2 extension property, a taxpayer may elect to accelerate the AMT credit (but not the general business tax credit) in lieu of bonus depreciation.

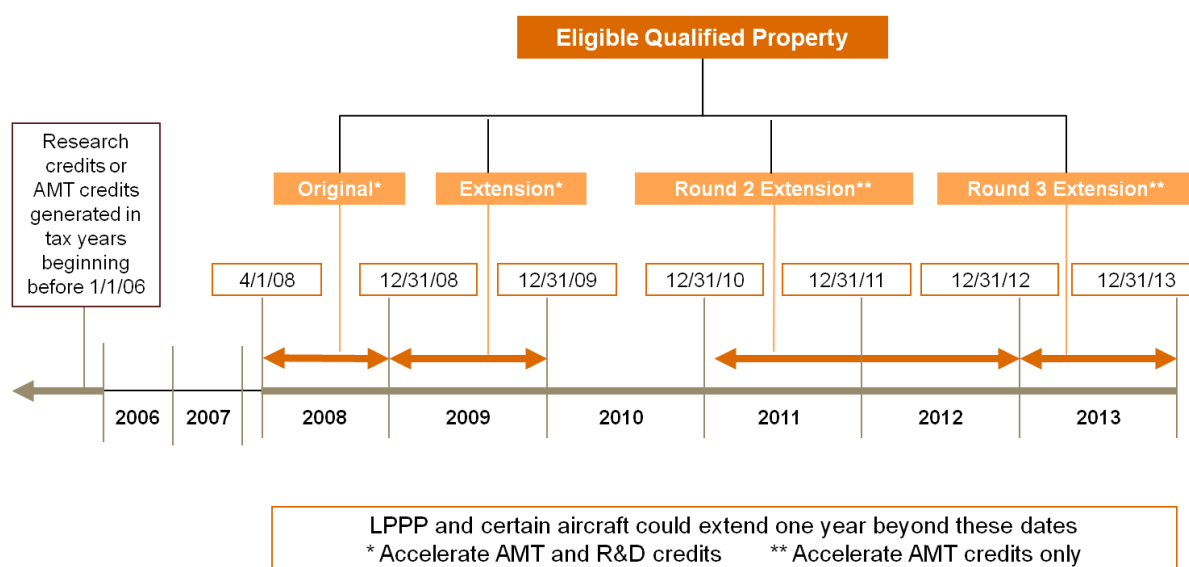
Round 3 extension property

ATRA amended Section 168(k)(4) by adding Section 168(k)(4)(J)(iv), which allows a taxpayer to accelerate AMT credits for round 3 extension property. Under Section 168(k)(4)(J)(iv), 'round 3 extension property' is property that constitutes EQP solely because of ATRA's extension of bonus depreciation. EQP is considered round 3 extension property if it is placed in service by the taxpayer after December 31, 2012, and before January 1, 2014.

Observation

These provisions apply to the periods mentioned above regardless of a taxpayer's tax year. Thus, fiscal-year companies must pay particular attention to the allocation of accelerated credits to fiscal years.

Timeline summary of section 168(k)(4) for original, extension, round 2 extension, and round 3 extension property



For additional Section 168(k)(4) guidance, see below:

Housing and Economic Recovery Act – 7/30/08

Rev. Proc. 2008-65 – 10/10/08

Rev. Proc. 2009-16 – 1/23/09

American Recovery and Reinvestment Tax Act –
2/17/09

Rev. Proc. 2009-33 – 7/1/09

Small Business Jobs Act of 2010 – 9/27/10

Tax Relief, Unemployment Insurance Reauthorization,
and Job Creation Act of 2010 – 12/17/10

American Taxpayer Relief Act of 2012 – 1/2/2013

Limitation

The amount of credits that can be refunded for each Section 168(k)(4) period is the lesser of: (1) the base bonus depreciation amount (i.e., approximately 20 percent of the bonus depreciation forgone by the taxpayer), (2) 6 percent of the sum of the taxpayer's unused and unexpired AMT credit carryforwards generated in tax years beginning before January 1, 2006, or (3) \$30 million.

Observation

Round 2 extension property treats 2011 and 2012 as one period. Thus, a taxpayer may accelerate a maximum of \$30 million in AMT credits for this two-year period.

A taxpayer may accelerate an additional \$30 million for round 3 extension property, regardless of how many credits, if any, it previously accelerated under Section 168(k)(4). A taxpayer that elects to accelerate credits for all four Section 168(k)(4) periods may accelerate a maximum of \$120 million in credits.

Time and manner for making an election

Section 168(k)(4)(H) provides different rules for (1) taxpayers that previously have elected to accelerate credits and (2) taxpayers that have not.

Previous election to accelerate credits

A taxpayer that previously elected to accelerate credits in lieu of bonus depreciation may choose whether to accelerate credits for a subsequent Section 168(k)(4) period. Taxpayers that previously elected to accelerate AMT credits are treated as having made an election to accelerate credits in a subsequent Section 168(k)(4) period.

A taxpayer that previously elected to accelerate credits but wishes to no longer accelerate the use of AMT credits must make an election not to accelerate these credits by the due date (including extensions) of its first federal income tax return for the year in which the taxpayer would be eligible to accelerate credits but no longer wishes to do so. The taxpayer makes the election by attaching a statement to the return indicating the election not to apply Section 168(k)(4) to the round 2 or round 3 extension property.

Thus, for example, a taxpayer that elected to accelerate general business credits or AMT credits for extension property may choose whether to accelerate AMT credits for round 2 extension property. This decision must have been made on the taxpayer's timely filed return for the first tax year ending on or after

December 31, 2010 for round 2 extension property, and must be made on its timely filed return for the first tax year ending on or after December 31, 2012 for round 3 extension property.

No previous election to accelerate credits

A taxpayer that has not previously elected to accelerate credits in lieu of bonus depreciation may elect to accelerate credits for each Section 168(k)(4) period. Once the election is made, it will apply to all subsequent Section 168(k)(4) periods until the taxpayer elects out using the procedures noted above. For taxpayers that have not previously elected to accelerate AMT credits that now wish to do so for round 3 extension property, the election must be made by the due date (including extensions) of the taxpayer's federal income tax return for its first tax year ending after December 31, 2012.

Note: Taxpayers that would like to elect Section 168(k)(4) for round 2 extension property but did not previously elect to do so on or before the due date, including extensions, for the first tax year ending after December 31, 2010, may request to make a late election under the relief provisions of Treas. Reg. Section 301.9100-3.

Manner of making the election and accelerating AMT credits

A taxpayer makes the election to accelerate AMT credits by (1) claiming the refundable credit on the appropriate line of Form 1120, US Corporation Income Tax Return, (2) filing Form 8827, Credit for Prior Year Minimum Tax, and (3) filing Form 4562, Depreciation and Amortization, indicating that the taxpayer used straight-line depreciation and did not claim bonus depreciation for any round 2 extension property.

Observation

Taxpayers should also be mindful of the tax accounting implications of these elections, especially the impact to the timing and amount of deferred tax assets recorded in their financial statements.

Electing corporate partners

A corporate partner making a Section 168(k)(4) election must notify in writing any partnership in which the corporate partner owns a partnership interest before the election is filed with an original or amended return. Failure to notify the partnership nullifies the taxpayer's attempted Section 168(k)(4) election.

A partnership that receives written notification from a corporate partner that made the Section 168(k)(4) election is required to depreciate the corporate partner's share of EQP using the straight-line method (and other relevant correlative adjustments) or to provide adequate information to such corporate partner to enable the corporate partner to compute its distributive share of depreciation using the straight-line method.

Note: A corporation that owns an interest in a partnership may impose a significant administrative burden on the partnership when making a Section 168(k)(4) election. We recommend that taxpayers consider the potential impact of making this election on any affected partnerships before making the election.

The takeaway

Numerous questions continue to arise under the provisions of Section 168(k)(4) for round 2 and round 3 extension property. The government announced its plan to publish future guidance on Section 168(k)(4) in the form of revenue procedures in its 2012-2013 priority guidance plan dated February 5, 2013. This guidance is expected to be published in the near future.

Let's talk

For a deeper discussion, please contact:

James Liechty
(202) 414-1694
james.f.liechty@us.pwc.com