Office of Chief Counsel
Internal Revenue Service
memorandum

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to:
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from: Chad Martinelli
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subject: Section 168(k) First-Year Depreciation Deduction
Taxpayer:
Tax Year(s): Taxable Year ended

This field attorney advice memorandum responds to your request for assistance on issues related to whether certain tangible property the taxpayer (Taxpayer) placed in service during its taxable year (the Taxable Year) is eligible for the additional first-year depreciation deduction in the Taxable Year under section 168(k) of the Internal Revenue Code (Code), as amended by the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017) (the Act) and its applicable regulations.[1]

I. DISCLOSURE STATEMENT

This advice may not be used or cited as precedent. This advice contains confidential information subject to attorney-client privilege. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact our office for our views. This advice is contingent on the accuracy of the information provided by the Internal Revenue Service (Service). If information is uncovered that is inconsistent with the facts recited in this

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[1] Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended and in effect for the Taxable Year.

memorandum, you should not rely on this memorandum and you should seek further advice from this office.

II. BACKGROUND

Taxpayer is a limited liability company organized in the State of and treated as a partnership for federal income tax purposes. Taxpayer uses an accrual method of accounting and has adopted a method of accounting for purposes of Treas. Reg. § 1.461-4(d)(6)(iii) (described below) that treats property as provided to Taxpayer when the property is accepted by Taxpayer.

In , Taxpayer and an unrelated third-party contractor organized as a corporation in the State of (the Contractor) executed an engineering, procurement, and construction (EPC) contract (the Contract) for the Contractor to construct a facility in the State of for use in Taxpayer's trade or business.[2] Pursuant to the Contract, the facility would be constructed in three phases: Phase One: One and common facilities; Phase Two: Two; and Phase Three: Three. The Contract limits damages to percent of the contract price, which is defined as the lump sum turn-key price for all phases of the work to be performed by the Contractor over the course of the Contract.

percent of the contract price is allocated to progress payments and percent to milestone payments. Progress payments are due and payable monthly to the extent of verifiable progress of the work that is actually achieved under the Contract. Milestone payments are due and payable periodically, to the extent supported by completion of a discrete portion of the work identified as a milestone on the Contract's payment schedule. If Taxpayer terminates the Contract for convenience, Taxpayer must pay Contractor for all work performed prior to termination. The Contract states it is governed by the laws of the State of .

Taxpayer describes the Contract as a "turn-key contract."[3] In summary, the Contract requires the Contractor to design the facility; construct the facility; inspect and test the facility; integrate the facility with existing property at the worksite; prepare the worksite and construct utilities and infrastructure; procure all supplies, materials, tools, and equipment; supply the workforce, except certain personnel to be provided by Taxpayer; obtain permitting related to the construction of the facility; procure lay-down areas, easements, and rights of access to the worksite; train Taxpayer's personnel to use the

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[3] A "turn-key" contract, also known as an engineering, procurement, and construction (EPC) contract, is a fixed-price, schedule-intensive construction contract, typical in the construction of single-purpose projects, such as energy plants, in which the contractor agrees to a wide variety of responsibilities, including the duties to provide for the design, engineering, procurement, and construction of the facility, to prepare start-up procedures, to conduct performance tests, to create operating manuals, and to train people to operate the facility. Black's Law Dictionary (11th ed. 2019).

facility; and other acts such that the facility would be fully functional and operating in accordance with law. In summary, the Contract requires Taxpayer to pay the contract price; supply electricity and access to that electricity where requested by the Contractor; supply information about existing property at the worksite; appoint a representative to act on Taxpayer's behalf under the Contract; allow the Contractor to access the worksite on Taxpayer's land; provide personnel to be trained by the Contractor; obtain and maintain permitting related to the operation of Taxpayer's business; provide a legal description and survey of the worksite; supply inputs to the facility; and make load the outputs of the facility.

The Contract states that Taxpayer shall have no responsibilities with respect to engineering, construction, pre-commissioning, commissioning, starting-up or testing of any phase, or operating any prior to substantial completion of each phase of the facility. Substantial completion means that a number of specified conditions have been satisfied with respect to the applicable phase, including that the phase is ready for start-up, the operating personnel have completed training, and the entire work for such phase has been completed without defect, except for punch list items. Substantial completion is evidenced by a substantial completion certificate.

Care, custody and control of the equipment and facilities for each phase pass from Contractor to Taxpayer on the day following the day on which Taxpayer countersigns the substantial completion certificate with respect to such phase. In addition, risk of physical loss and damage to each phase transfers from Contractor to Taxpayer upon substantial completion of such phase. Title to all or any portion of the equipment passes to Taxpayer upon the earlier of (i) incorporation of such equipment into the new facilities; (ii) the substantial completion date of the applicable phase; and (iii) the effective date of termination or cancellation of the Contract.

Construction of the facility began around . Taxpayer made payments cumulatively exceeding percent of the total cost of the facility in . In , Taxpayer and Contractor executed a substantial completion certificate for Phase One, and Taxpayer placed One and its common facilities into service.[4] On its return, Taxpayer claimed the 100 percent additional first-year depreciation deduction for One and its common facilities.

III. LAW

A. Property Eligible for the First-Year Additional Depreciation Deduction under Section 168(k)

Section 168(k)(1) provides that, in the case of any qualified property, (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 the applicable

[4] In , commercial operation of One commenced. Source : .

percentage of the adjusted basis of the qualified property, and (B) the adjusted basis of the qualified 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.

Treas. Reg. § 1.168(k)-2(b)(1) provides that qualified property is depreciable property, as defined in Treas. Reg. § 1.168(b)-1(a)(1), that meets all the following requirements in the first taxable year in which the property is subject to depreciation by the taxpayer whether or not depreciation deductions for the property are allowable: (i) the requirements in Treas. Reg. § 1.168(k)-2(b)(2) (description of qualified property); (ii) the requirements in Treas. Reg. § 1.168(k)-2(b)(3) (original use or used property acquisition requirements); (iii) the requirements in Treas. Reg. § 1.168(k)-2(b)(4) (placed-in-service date); and (iv) The requirements in Treas. Reg. § 1.168(k)-2(b)(5) (acquisition of property).

In general, to be eligible for the additional first-year depreciation deduction under section 168(k), qualified property must be acquired and placed in service after September 27, 2017 pursuant to the applicable rules in Treas. Reg. § 1.168(k)-2.

Treas. Reg. § 1.168(k)-2(b)(5)(ii)(A) provides that, generally, depreciable property will meet the acquisition requirements of Treas. Reg. § 1.168(k)-2(b)(5) if the property is acquired by the taxpayer after September 27, 2017. Treas. Reg. § 1.168(k)-2(b)(5) provides rules to allow depreciable property to be treated as meeting the acquisition requirements of Treas. Reg. § 1.168(k)-2(b)(5) if the property is acquired pursuant to a written binding contract entered into by the taxpayer after September 27, 2017. Property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income is not acquired pursuant to a written binding contract but is considered to be self-constructed property under Treas. Reg. § 1.168(k)-2(b)(5).

Treas. Reg. § 1.168(k)-2(b)(5)(iv)(A) provides that, if a taxpayer manufactures, constructs, or produces property for use by the taxpayer in its trade or business or for its production of income, the acquisition rules in Treas. Reg. § 1.168(k)-2(b)(5)(ii) are treated as met for the property if the taxpayer begins manufacturing, constructing, or producing the property after September 27, 2017. Treas. Reg. § 1.168(k)-2(b)(5)(iv) provides that property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract, as defined in Treas. Reg. § 1.168(k)-2(b)(5)(iii), that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business or for its production of income is considered to be manufactured, constructed, or produced by the taxpayer, and is treated as self-constructed property for purposes of the acquisition rules under Treas. Reg. § 1.168(k)-2(b)(5)(ii). If a taxpayer enters into a written binding contract, as defined in Treas. Reg. § 1.168(k)-2(b)(5)(iii), before September 28, 2017, with another person to manufacture, construct, or produce property and the

manufacture, construction, or production of this property begins after September 27, 2017, the acquisition rules in Treas. Reg. § 1.168(k)-2(b)(5)(ii) are met.

Treas. Reg. § 1.168(k)-2(b)(5)(iv)(B)(1) provides that, for purposes of Treas. Reg. § 1.168(k)-2(b)(5)(iv)(A), manufacture, construction, or production of property begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature begins depends on the facts and circumstances. For example, if a retail motor fuels outlet is to be constructed on-site, construction begins when physical work of a significant nature commences at the site; that is, when work begins on the excavation for footings, pouring the pads for the outlet, or the driving of foundation pilings into the ground. Preliminary work, such as clearing a site, test drilling to determine soil condition, or excavation to change the contour of the land (as distinguished from excavation for footings) does not constitute the beginning of construction. However, if a retail motor fuels outlet is to be assembled on-site from modular units manufactured off-site and delivered to the site where the outlet will be used, manufacturing begins when physical work of a significant nature commences at the off-site location.

Treas. Reg. § 1.168(k)-2(b)(5)(iv)(B)(2) provides that, for purposes of Treas. Reg. § 1.168(k)-2(b)(5)(iv)(B)(1), a taxpayer may choose to determine when physical work of a significant nature begins. Physical work of a significant nature will be considered to begin at the time the taxpayer incurs (in the case of an accrual basis taxpayer) or pays (in the case of a cash basis taxpayer) more than 10 percent of the total cost of the property, excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching. When property is manufactured, constructed, or produced for the taxpayer by another person, this safe harbor test must be satisfied by the taxpayer. For example, if a retail motor fuels outlet or other facility is to be constructed for an accrual basis taxpayer by another person for the total cost of $200,000, excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching, construction is deemed to begin for purposes of Treas. Reg. § 1.168(k)-2(b)(5)(iv)(B)(2) when the taxpayer has incurred more than 10 percent of the total cost of the property. A taxpayer chooses to make the election to use the 10 percent safe harbor by attaching an election statement to its federal income tax return for the placed-in-service year of the property. Id.

B. Timing of Deductions for Accrual Method Taxpayers

Section 461(a) states, in part, that a deduction shall be taken for the taxable year which is the proper taxable year under the method of accounting used in computing taxable income.

Treas. Reg. § 1.461-1(a)(2) provides, in part, that under an accrual method of accounting, a liability (as defined in Treas. Reg. § 1.446-1(c)(1)(ii)(B)) is incurred, and generally is taken into account for federal income tax purposes, in the taxable year in

which all the events have occurred that establish the fact of the liability, the amount of the liability can be determined with reasonable accuracy, and economic performance has occurred with respect to the liability. See also Treas. Reg. § 1.446-1(c)(1)(ii)(A). The first two requirements are commonly referred to as the all events test and the third requirement is called the economic performance requirement.

Treas. Reg. § 1.446-1(c)(1)(ii)(B) defines the term "liability" as including any item allowable as a deduction, cost, or expense for federal income tax purposes. In addition to allowable deductions, the term includes any amount otherwise allowable as a capitalized cost, as a cost taken into account in computing cost of goods sold, as a cost allocable to a long-term contract, or as any other cost or expense. Id.

Section 461(h) and Treas. Reg. § 1.461-4(d)(2)(i) provide generally that, if the liability of the taxpayer arises out of the providing of services or property to the taxpayer by another person, economic performance occurs as the services or property is provided.

Treas. Reg. § 1.461-4(d)(7), Example 4:

> Services or property provided to the taxpayers.
>
> (i) LP1, a calendar year, accrual method limited partnership, owns the working interest in a parcel of property containing oil and gas. During December 1990, LP1 enters into a turnkey contract with Z corporation pursuant to which LP1 pays Z $200,000 and Z is required to provide a completed well by the close of 1992. In May 1992, Z commences drilling the well, and, in December 1992, the well is completed.
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> (ii) Under paragraph (d)(2) of this section, economic performance with respect to LP1's liability for drilling and development services provided to LP1 by Z occurs as the services are provided. Consequently, $200,000 is incurred by LP1 for the 1992 taxable year.

Treas. Reg. § 1.461-4(d)(6) provides rules relating to the provision of services or property to the taxpayer for purposes of Treas. Reg. § 1.461-4(d). Treas. Reg. § 1.461-4(d)(6)(iii) provides that a taxpayer is permitted to treat property as provided to the taxpayer when the property is delivered or accepted, or when title to the property passes. The method used by the taxpayer to determine when property is provided is a method of accounting that must comply with the rules of Treas. Reg. § 1.446-1(e). Id. Thus, the method of determining when property is provided must be used consistently from year to year and cannot be changed without the consent of the Commissioner. Id.

IV. TAXPAYER'S POSITION

Taxpayer argues that:

> The [Contract] is a turn-key contract and substantial completion is the event whereby the liability has been fixed, the amount of the liability has been determined with reasonable accuracy, and the risk of loss passes to [Taxpayer]. The costs associated with the will be incurred and deducted by [Taxpayer] in accordance with Section 461 at the time substantial completion is achieved for the relevant or common facilities, as evidenced by countersigned substantial completion certificates.
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> The date construction begins on [Taxpayer's] project is determined based on the 10% safe harbor under Treas. Reg. Section 1.168(k)-2(b)(5)(iv)(B)(2). [Taxpayer] utilizes the accrual method of accounting. As such, business expenses are incurred when (1) all the events have occurred that establish the fact of the liability, (2) the amount of the liability can be determined with reasonable accuracy, and (3) economic performance has occurred with respect to the liability. See Treas. Reg. Section 1.461-1(a)(2). The first two requirements are commonly referred to as the "all events test" and the third requirement is commonly referred to as the "economic performance requirement." The all events test is not treated as met any earlier than when economic performance occurs. See IRC Section 461(h). Although the term "incur" is not defined for purposes of the 10% test, Treas. Reg. Section 1.168(k)-2(b)(5)(iv)(B) refers to an accrual basis taxpayer. Thus, for an accrual basis taxpayer like [Taxpayer], the general rules for accrual apply (i.e., the all events test and the economic performance requirement of Section 461). Accordingly, for purposes of the 10% test, a taxpayer should be treated as having incurred costs associated to property at the time prescribed by Section 461.
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> With respect to property, a taxpayer may treat the property as provided to the taxpayer when the property is delivered or accepted, or when title to the property passes. See Treas. Reg. Section 1.461-4(d)(6)(iii). The method used by the taxpayer to determine when property is provided is a method of accounting.
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> Substantial completion is the point of acceptance for [Taxpayer]. At substantial completion, the liability has been fixed, the amount of the liability has been determined with reasonable accuracy, and the risk of loss passes to [Taxpayer]. [Taxpayer's] first and common infrastructure achieved substantial completion on .

V. ANALYSIS AND CONCLUSIONS

In general, to determine whether a taxpayer satisfies the self-constructed property acquisition requirement provisions in Treas. Reg. § 1.168(k)-2(b)(5)(iv), the following issues are analyzed: (1) whether the Contract is a binding contract under Treas. Reg. § 1.168(k)-2(b)(5)(iii); (2) whether the manufacture, construction, or production of the

property began after September 27, 2017 within the meaning of Treas. Reg. § 1.168(k)-2(b)(5)(iv)(B)(1); and (3) whether the taxpayer validly elected the 10 percent safe harbor described in Treas. Reg. § 1.168(k)-2(b)(5)(iv)(B)(2). The sole factor the examiners have asked us to consider in this case is issue (2): Did the manufacture, construction, or production of the property (i.e., One and its common facilities) begin after September 27, 2017?

As noted above, under Treas. Reg. § 1.168(k)-2(b)(5)(iv)(B)(1), the manufacture, construction, or production of property for purposes of the acquisition requirements in Treas. Reg. § 1.168(k)-2(b)(5) begins when physical work of a significant nature begins. If taxpayer validly elects to apply the safe harbor described in Treas. Reg. § 1.168(k)-2(b)(5)(iv)(B)(2), physical work of a significant nature will be considered to begin at the time the taxpayer using the overall accrual method incurs more than 10 percent of the total cost of the property, excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching.

Because Taxpayer in this case uses the accrual method of accounting, it determines when costs relating to the Contract have been incurred by applying the all events test and the economic performance requirement under section 461. For an item to be deductible under the all events test, it must be "fixed and certain," Thor Power Tool v. Commissioner, 439 U.S. 522, 543 (1979), and the amount must be determinable with reasonable accuracy, Treas. Reg. § 1.461-1(a)(2).

In the instant case, the costs attributable to the Contract became fixed and determinable with each monthly invoice that the Contractor submitted to Taxpayer for payment based on the progress of the work. However, this alone doesn't establish when the costs were incurred, as, under section 461(h)(1), the all events test shall not be treated as met any earlier than when economic performance with respect to such item occurs.

If Taxpayer's liability is for services provided to Taxpayer by another person, economic performance occurs as such person provides such services. Section 461(h)(2)(A)(i); Treas. Reg. § 1.461-4(d)(2)(i). On the other hand, if Taxpayer's liability is for property provided to Taxpayer by another person, economic performance occurs as the person provides such property. Section 461(h)(2)(A)(ii); Treas. Reg. § 1.461-4(d)(2)(i).

Treas. Reg. § 1.461-4(d)(6)(iii) permits a taxpayer to treat property as provided when the property is delivered to the taxpayer, accepted by the taxpayer, or when title to the property has passed to the taxpayer. Taxpayer has adopted a method of accounting that treats property as provided to it when the property is accepted. Thus, the threshold issue in this case is whether the Contract should be treated as a contract for property, in which case the liability will be treated as incurred when the property is accepted, or as a contract for services and property, in which case the service portion of the liability will be treated as incurred when the services are provided.

Property Versus Services

The subject matter of the Contract is a facility – i.e., property. Nevertheless, providing the property necessarily involves construction services. Case in point, section 2.01 of the Contract defines the Contractor's "Work" as including both services and goods to be performed or provided by the Contractor under the Contract.

Treas. Reg. § 1.461-4(d)(6)(iv) provides that, if different services or items of property are required to be provided to a taxpayer under a single contract or agreement, economic performance generally occurs over the time each service is provided and as each item of property is provided. However, if a service or item of property to be provided to the taxpayer is incidental to other services or property to be provided under a contract or agreement, the taxpayer is not required to allocate any portion of the total contract price to the incidental service or property. Id. For purposes of Treas. Reg. § 1.461-4(d)(6)(iv), services or property are treated as incidental only if "(A) The cost of the services or property is treated on the taxpayer's books and records as part of the cost of the other services or property provided under the contract; and (B) The aggregate cost of the services or property does not exceed 10 percent of the total contract price." Id.

Notwithstanding the foregoing, the Service has issued several nonprecedential rulings in the context of section 168(k) that conclude that the costs of services that are integral to the provision of property that is the subject matter of a turn-key construction contract are costs of the property and are not separately allocated to services. See, e.g., PLR 201313012 (Mar. 29, 2013); PLR 201214003 (Apr. 6, 2012); PLR 20121004 (Mar. 9, 2012).

In other contexts, the Service has declined to require a different method of accounting for services, provided the services are an integral part of the provision of goods or are incident to or necessary for the manufacture, building, installation, or construction of the subject matter of the contract. See Former Treas. Reg. § 1.451-5 and Treas. Reg. § 1.460-1(d), both of which are described in greater detail below.

Former Treas. Reg. § 1.451-5 provided income deferral, under certain circumstances, for advance payments received for the sale of goods. Under that provision, an advance payment for the sale of goods included amounts received for services that were an "integral part" of the provision of the goods. Id. The taxpayer was not required to carve out and treat any portion of the advance payment related to integral services under a different method of accounting. Id.; see also T.D. 7103, 1971-1 C.B. 138 (Mar. 23, 1971).

Former Treas. Reg. § 1.451-5 was removed after the Act added new section 451(c), which overrode the deferral method provided by the regulation. See T.D. 9870.

In the context of section 460, the Service does not require a different method of accounting for gross receipts and costs attributable to non-long-term contract activities required under a single long-term contract, provided those activities are "incident to or

necessary for the manufacture, building, installation, or construction" of the subject matter of the long-term contract. Treas. Reg. § 1.460-1(d).

In this case, based on the facts presented and the above reasoning, we conclude that the Contract should be treated as a contract solely for property for purposes of section 461(h). The main objective of the Contract is to provide Taxpayer with tangible property that is fully operational and in ready-to-use condition. The related construction services are merely a means to that end.

Because the construction services are an integral and unavoidable part of providing the property to Taxpayer on a turn-key basis, we do not view them as a service that is *different* from the property within the meaning of Treas. Reg. § 1.461-4(d)(6)(iv). Therefore, we do not think the services must be considered separately in determining when economic performance occurs. As a result, Taxpayer is entitled to treat all costs attributable to the Contract, including costs associated with the provision of services capitalized to the self-constructed property, as incurred when the property is provided to Taxpayer.

Acceptance

Taxpayer's method of accounting under Treas. Reg. § 1.461-4(d)(6)(iii) is to treat property as provided to Taxpayer when the property is accepted. Under a turn-key contract for property, the proper question is when the project as a whole is accepted. In contrast, under a non-turn-key contract, one must analyze each property provided pursuant to the contract separately to determine when acceptance occurs with respect to that property and whether it is eligible for the additional first-year depreciation deduction under section 168(k).

In Caltex Oil Venture v. Commissioner, 138 T.C. 18, 30-38 (2012), the Tax Court examined a contract for the drilling of oil and gas wells to determine whether costs thereunder qualified for the special 3 ½ month timing rule in Treas. Reg. § 1.461-4(d)(6)(ii). The determination hinged on whether the contract at issue was a turn-key contract in the oil industry, which the Tax Court defined as "a contract where the driller undertakes to furnish everything, and to do all the work required to complete the well, place it on production, and turn it over ready to 'turn the key' and start the oil running into the tanks." Id. at 31 n.16 (citing Cont'l Oil Co. v. Jones, 177 F.2d 508, 510 (10th Cir. 1949)). The Court concluded that the contract fit that definition, emphasizing that it "did not provide an exhaustive, itemized list of services to be provided to [taxpayer]" and "it called for lump-sum payments…without any allocation of those sums to particular services." Id. at 36-37. As a result, it held that the contract was non-severable and, therefore, taxpayer could only use the special timing rule in Treas. Reg. § 1.461(d)(6)(ii) if *all* of the services called for in the contract could have been reasonably expected to be performed within 3 ½ months of payment. Id. at 37.

Here, we see no indication that the Contract is not a true turn-key contract. Although title under the Contract generally passes prior to completion of the project, (1) the

Contractor provides both design and construction services and (2) Taxpayer's role is limited in scope because it is not coordinating between multiple parties.

Furthermore, like in Caltex, the Contract doesn't allocate specific sums to separate pieces of property. While, to our knowledge, the contract in Caltex did not involve distinct phases, we do not think the difference is material. We believe a strong argument can be made that the Contract is turn-key and non-severable with respect to each phase, because, for each phase, the Contractor is responsible for doing all the work required to complete the relevant and turn it over in ready-to-use condition. We therefore conclude that the costs of One and its common facilities are incurred when Phase One is accepted.

The meaning of acceptance is not defined in the Code or the regulations. Whether property has been accepted is a question to be governed by the form and substance of the contract at issue. We agree with Taxpayer that, under the terms of the Contract, Phase One is accepted upon substantial completion, as evidenced by the substantial completion certificate for that phase. The risk of physical loss and damage with respect to Phase One passes from Contractor to Taxpayer on that date. Additionally, on the day following the day on which Taxpayer countersigns the substantial completion certificate with respect to such phase, care, custody, and control of the Phase One facilities and equipment pass from Contractor to Taxpayer.

Because the substantial completion certificate for Phase One was executed in , none of the costs of One and its common facilities were incurred until that year. Applying the 10 percent safe harbor in Treas. Reg. § 1.168(k)-2(b)(5)(iv)(B)(2) to these facts, we conclude that the manufacture, construction, or production of One and its common facilities is considered to begin after September 27, 2017, and meets the acquisition requirements for the additional first-year depreciation deduction under Treas. Reg. § 1.168(k)-2(b)(5)(ii).

Please contact undersigned if you have any further questions.

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