CARES Act (March 27, 2020)

Selected* Modifications to Internal Revenue Code

Sections 172, 461(l), 53, 163(j), and 168(e) and (g)

*This does not include all IRC changes from the CARES Act, including the modifications to sections 860E or 5214 and the changes relating to retirement plans, and does not reflect other tax-related provisions of the CARES Act and related measures, including the employee retention tax credit (Section 2301 of the CARES Act) and the deferral of certain tax payments (Section 2302 of the CARES Act and Notice 2020-18)

§172 [as modified by §2303 of the CARES Act]

(a) Deduction allowed.

There shall be allowed as a deduction for the taxable year an amount equal to ~~the lesser of —~~

(1) in the case of a taxable year beginning before January 1, 2021, the aggregate of the net operating loss carryovers to such year, plus the net operating loss carrybacks to such year, ~~or~~and

(2) in the case of a taxable year beginning after December 31, 2020, the sum of—

(A) the aggregate amount of net operating losses arising in taxable years beginning before January 1, 2018, carried to such taxable year, plus

(B) the lesser of—

(i) the aggregate amount of net operating losses arising in taxable years beginning after December 31, 2017, carried to such taxable year, or

(ii) 80 percent of the excess (if any) of—

(~~2~~I) ~~80 percent of~~ taxable income computed without regard to the deductions ~~allowable~~ under this section~~.~~ and sections 199A and 250, over

(II) the amount determined under subparagraph (A).

For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.

(b) Net operating loss carrybacks and carryovers.

(1) Years to which loss may be carried.

(A) General rule. ~~Except as otherwise provided in this paragraph, a~~A net operating loss for any taxable year—

(i) shall be a net operating loss carryback to the extent provided in subparagraphs (B), (C)(i), and (D), and

(ii) except as provided in subparagraph (C)(ii), shall be a net operating loss carryover—

(I) in the case of a net operating loss arising in a taxable year beginning before January 1, 2018, to each of the 20 taxable years following the taxable year of the loss, and

(II) in the case of a net operating loss arising in a taxable year beginning after December 31, 2017, to each taxable year following the taxable year of the loss.

~~(i)~~ except as otherwise provided in this paragraph, shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss, and

(ii) shall be a net operating loss carryover to each taxable year following the taxable year of the loss.

(B) Farming losses.

(i) In general. In the case of any portion of a net operating loss for the taxable year which is a farming loss with respect to the taxpayer, such loss shall be a net operating loss carryback to each of the 2 taxable years preceding the taxable year of such loss.

(ii) Farming loss. For purposes of this section, the term "farming loss" means the lesser of—

(I) the amount which would be the net operating loss for the taxable year if only income and deductions attributable to farming businesses (as defined in section 263A(e)(4)) are taken into account, or

(II) the amount of the net operating loss for such taxable year.

(iii) Coordination with paragraph (2). For purposes of applying paragraph (2), a farming loss for any taxable year shall be treated as a separate net operating loss for such taxable year to be taken into account after the remaining portion of the net operating loss for such taxable year.

(iv) Election. Any taxpayer entitled to a 2-year carryback under clause (i) from any loss year may elect not to have such clause apply to such loss year. Such election shall be made in such manner as prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(C) Insurance companies. In the case of an insurance company (as defined in section 816(a)) other than a life insurance company, the net operating loss for any taxable year—

(i) shall be a net operating loss carryback to each of the 2 taxable years preceding the taxable year of such loss, and

(ii) shall be a net operating loss carryover to each of the 20 taxable years following the taxable year of the loss.

(D) ~~[Repealed.]~~Special rule for losses arising in 2018, 2019, and 2020.

(i) In general. In the case of any net operating loss arising in a taxable year beginning after December 31, 2017, and before January 1, 2021—

(I) such loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss, and

(II) subparagraphs (B) and (C)(i) shall not apply.

(ii) Special rules for REITs. For purposes of this subparagraph—

(I) In general. A net operating loss for a REIT year shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss.

(II) Special rule. In the case of any net operating loss for a taxable year which is not a REIT year, such loss shall not be carried to any preceding taxable year which is a REIT year.

(III) REIT year. For purposes of this subparagraph, the term "REIT year" means any taxable year for which the provisions of part II of subchapter M (relating to real estate investment trusts) apply to the taxpayer.

(iii) Special rule for life insurance companies. In the case of a life insurance company, if a net operating loss is carried pursuant to clause (i)(I) to a life insurance company taxable year beginning before January 1, 2018, such net operating loss carryback shall be treated in the same manner as an operations loss carryback (within the meaning of section 810 as in effect before its repeal) of such company to such taxable year.

(iv) Rule relating to carrybacks to years to which section 965 applies. If a net operating loss of a taxpayer is carried pursuant to clause (i)(I) to any taxable year in which an amount is includible in gross income by reason of section 965(a), the taxpayer shall be treated as having made the election under section 965(n) with respect to each such taxable year.

(v) Special rules for elections under paragraph (3).

(I) Special election to exclude section 965 years. If the 5-year carryback period under clause (i)(I) with respect to any net operating loss of a taxpayer includes 1 or more taxable years in which an amount is includible in gross income by reason of section 965(a), the taxpayer may, in lieu of the election otherwise available under paragraph (3), elect under such paragraph to exclude all such taxable years from such carryback period.

(II) Time of elections. An election under paragraph (3) (including an election described in subclause (I)) with respect to a net operating loss arising in a taxable year beginning in 2018 or 2019 shall be made by the due date (including extensions of time) for filing the taxpayer's return for the first taxable year ending after the date of the enactment of this subparagraph.

(E) [Repealed.]

(F) [Repealed.]

(H) [Repealed.]

(I) [Repealed.]

(J) [Repealed.]

(2) Amount of carrybacks and carryovers. The entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the "loss year") shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall—

(A) be computed with the modifications specified in subsection (d) other than paragraphs (1) , (4), and (5) thereof, and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss year or for any taxable year thereafter,

(B) not be considered to be less than zero, and

(C) ~~not exceed the amount determined under~~for taxable years beginning after December 31, 2020, be reduced by 20 percent of the excess (if any) described in subsection (a)(2)(B)(ii) for such ~~prior~~ taxable year.

(3) Election to waive carryback. Any taxpayer entitled to a carryback period under paragraph (1) may elect to relinquish the entire carryback period with respect to a net operating loss for any taxable year. Such election shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss for which the election is to be in effect. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(c) Net operating loss defined. For purposes of this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income. Such excess shall be computed with the modifications specified in subsection (d).

(d) Modifications. The modifications referred to in this section are as follows:

(1) Net operating loss deduction. No net operating loss deduction shall be allowed.

(2) Capital gains and losses of taxpayers other than corporations. In the case of a taxpayer other than a corporation—

(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets; and

(B) the exclusion provided by section 1202 shall not be allowed.

(3) Deduction for personal exemptions. No deduction shall be allowed under section 151 (relating to personal exemptions). No deduction in lieu of any such deduction shall be allowed.

(4) Nonbusiness deductions of taxpayers other than corporations. In the case of a taxpayer other than a corporation, the deductions allowable by this chapter which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business. For purposes of the preceding sentence—

(A) any gain or loss from the sale or other disposition of—

(i) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or

(ii) real property used in the trade or business,

shall be treated as attributable to the trade or business;

(B) the modifications specified in paragraphs (1) , (2)(B) , and (3) shall be taken into account;

(C) any deduction for casualty or theft losses allowable under paragraph (2) or (3) of section 165(c) shall be treated as attributable to the trade or business; and

(D) any deduction allowed under section 404 to the extent attributable to contributions which are made on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall not be treated as attributable to the trade or business of such individual.

(5) Computation of deduction for dividends received. The deductions allowed by sections 243 (relating to dividends received by corporations) and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions).

(6) Modifications related to real estate investment trusts. In the case of any taxable year for which part II of subchapter M (relating to real estate investment trusts) applies to the taxpayer—

(A) the net operating loss for such taxable year shall be computed by taking into account the adjustments described in section 857(b)(2) (other than the deduction for dividends paid described in section 857(b)(2)(B));

(B) where such taxable year is a “prior taxable year” referred to in paragraph (2) of subsection (b) , the term “taxable income” in such paragraph shall mean “real estate investment trust taxable income” (as defined in section 857(b)(2)); and

(C) subsection (a)(2)(B)(ii)(I) shall be applied by substituting "real estate investment trust taxable income (as defined in section 857(b)(2) but without regard to the deduction for dividends paid (as defined in section 561))" for "taxable income".

(7) Repealed.

(8) Qualified business income deduction. Any deduction under section 199A shall not be allowed.

(9) Deduction for foreign-derived intangible income. The deduction under section 250 shall not be allowed.

(e) Law applicable to computations. In determining the amount of any net operating loss carryback or carryover to any taxable year, the necessary computations involving any other taxable year shall be made under the law applicable to such other taxable year.

(f) Special rule for insurance companies. In the case of an insurance company (as defined in section 816(a)) other than a life insurance company—

(1) the amount of the deduction allowed under subsection (a) shall be the aggregate of the net operating loss carryovers to such year, plus the net operating loss carrybacks to such year, and

(2) subparagraph (C) of subsection (b)(2) shall not apply.

(g) Cross references.

(1) For treatment of net operating loss carryovers in certain corporate acquisitions, see section 381.

(2) For special limitation on net operating loss carryovers in case of a corporate change of ownership, see section 382.

(h) Repealed.

§13302(e) of TCJA (effective dates of TCJA changes to §172) [as modified by §2302 of CARES Act]

(e) Effective Date.—

(1) Net operating loss limitation.--The amendments made by subsections (a) and (d)(2) shall apply to—

(A) taxable years beginning after December 31, 2017, and

(B) taxable years beginning on or before such date to which net operating losses arising in taxable years beginning after ~~December 31, 2017~~such date are carried.

(2) Carryforwards and carrybacks.--The amendments made by subsections (b), (c), and (d)(1) shall apply to net operating losses arising in taxable years ending after December 31, 2017.

§461(l) [as modified by §2304 of CARES Act]

(l) Limitation on excess business losses of noncorporate taxpayers.

(1) Limitation. In the case of a taxpayer other than a corporation—

(~~1~~A) ~~Limitation. In the case of~~for any taxable year ~~of a taxpayer other than a corporation~~ beginning after December 31, 2017, and before January 1, 2026~~—~~

, ~~(A)~~ subsection (j) (relating to limitation on excess farm losses of certain taxpayers) shall not apply, and

(B) for any taxable year beginning after December 31, 2020, and before January 1, 2026, any excess business loss of the taxpayer for the taxable year shall not be allowed.

(2) Disallowed loss carryover. Any loss which is disallowed under paragraph (1) shall be treated as a net operating loss ~~carryover to~~for the ~~following~~ taxable year for purposes of determining any net operating loss carryover under section 172(b) for subsequent taxable years.

(3) Excess business loss. For purposes of this subsection—

(A) In general. The term "excess business loss" means the excess (if any) of—

(i) the aggregate deductions of the taxpayer for the taxable year which are attributable to trades or businesses of such taxpayer (determined without regard to whether or not such deductions are disallowed for such taxable year under paragraph (1) and without regard to any deduction allowable under section 172 or 199A), over

(ii) the sum of—

(I) the aggregate gross income or gain of such taxpayer for the taxable year which is attributable to such trades or businesses, plus

(II) $250,000 (200 percent of such amount in the case of a joint return).

Such excess shall be determined without regard to any deductions, gross income, or gains attributable to any trade or business of performing services as an employee.

(B) Treatment of capital gains and losses.

(i) Losses. Deductions for losses from sales or exchanges of capital assets shall not be taken into account under subparagraph (A)(i).

(ii) Gains. The amount of gains from sales or exchanges of capital assets taken into account under subparagraph (A)(ii) shall not exceed the lesser of—

(I) the capital gain net income determined by taking into account only gains and losses attributable to a trade or business, or

(II) the capital gain net income.

(~~B~~C) Adjustment for inflation. In the case of any taxable year beginning after December 31, 2018, the $250,000 amount in subparagraph (A)(ii)(II) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "2017" for "2016" in subparagraph (A)(ii) thereof.

If any amount as increased under the preceding sentence is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

(4) Application of subsection in case of partnerships and S corporations. In the case of a partnership or S corporation—

(A) this subsection shall be applied at the partner or shareholder level, and

(B) each partner's or shareholder's allocable share of the items of income, gain, deduction, or loss of the partnership or S corporation for any taxable year from trades or businesses attributable to the partnership or S corporation shall be taken into account by the partner or shareholder in applying this subsection to the taxable year of such partner or shareholder with or within which the taxable year of the partnership or S corporation ends.

For purposes of this paragraph, in the case of an S corporation, an allocable share shall be the shareholder's pro rata share of an item.

(5) Additional reporting. The Secretary shall prescribe such additional reporting requirements as the Secretary determines necessary to carry out the purposes of this subsection.

(6) Coordination with section 469. This subsection shall be applied after the application of section 469.

§53 [as modified by §2305 of CARES Act]

(a) Allowance of credit. There shall be allowed as a credit against the tax imposed by this chapter for any taxable year an amount equal to the minimum tax credit for such taxable year.

(b) Minimum tax credit. For purposes of subsection (a), the minimum tax credit for any taxable year is the excess (if any) of—

(1) the adjusted net minimum tax imposed for all prior taxable years beginning after 1986, over

(2) the amount allowable as a credit under subsection (a) for such prior taxable years.

(c) Limitation. The credit allowable under subsection (a) for any taxable year shall not exceed the excess (if any) of—

(1) the regular tax liability of the taxpayer for such taxable year reduced by the sum of the credits allowable under subparts A, B, D, E, and F of this part, over

(2) the tentative minimum tax for the taxable year.

(d) Definitions. For purposes of this section—

(1) Net minimum tax.

(A) In general. The term "net minimum tax" means the tax imposed by section 55.

(B) Credit not allowed for exclusion preferences.

(i) Adjusted net minimum tax. The adjusted net minimum tax for any taxable year is—

(I) the amount of the net minimum tax for such taxable year, reduced by

(II) the amount which would be the net minimum tax for such taxable year if the only adjustments and items of tax preference taken into account were those specified in clause (ii) .

(ii) Specified items. The following are specified in this clause—

(I) the adjustments provided for in subsection (b)(1) of section 56, and

(II) the items of tax preference described in paragraphs (1) , (5) and (7) of section 57(a).

(iii) Credit allowable for exclusion preferences of corporations. In the case of a corporation—

(I) the preceding provisions of this subparagraph shall not apply, and

(II) the adjusted net minimum tax for any taxable year is the amount of the net minimum tax for such year.

(2) Tentative minimum tax. The term "tentative minimum tax" has the meaning given to such term by section 55(b), except that in the case of a corporation, the tentative minimum tax shall be treated as zero.

(3) AMT term references. In the case of a corporation, any references in this subsection to section 55, 56, or 57 shall be treated as a reference to such section as in effect before the amendments made by Tax Cuts and Jobs Act.

(e) Portion of credit treated as refundable.

(1) In general. In the case of any taxable year of a corporation beginning in 2018~~,~~ or 2019~~, 2020, or 2021~~, the limitation under subsection (c) shall be increased by the AMT refundable credit amount for such year.

(2) AMT refundable credit amount. For purposes of paragraph (1), the AMT refundable credit amount is an amount equal to 50 percent (100 percent in the case of a taxable year beginning in ~~2021~~2019) of the excess (if any) of—

(A) the minimum tax credit determined under subsection (b) for the taxable year, over

(B) the minimum tax credit allowed under subsection (a) for such year (before the application of this subsection for such year).

(3) Credit refundable. For purposes of this title (other than this section), the credit allowed by reason of this subsection shall be treated as a credit allowed under subpart C (and not this subpart).

(4) Short taxable years. In the case of any taxable year of less than 365 days, the AMT refundable credit amount determined under paragraph (2) with respect to such taxable year shall be the amount which bears the same ratio to such amount determined without regard to this paragraph as the number of days in such taxable year bears to 365.

(5) Special rule. In the case of a corporation making an election under this paragraph—

(A) paragraph (1) shall not apply, and

(B) subsection (c) shall not apply to the first taxable year of such corporation beginning in 2018.

Section 2305(d) of CARES Act [not in IRC but relates to modifications to §53]

(d) Special rule.

(1) In general. For purposes of the Internal Revenue Code of 1986, a credit or refund for which an application described in paragraph (2)(A) is filed shall be treated as made under section 6411 of such Code.

(2) Tentative refund.

(A) Application. A taxpayer may file an application for a tentative refund of any amount for which a refund is due by reason of an election under section 53(e)(5) of the Internal Revenue Code of 1986. Such application shall be in such manner and form as the Secretary of the Treasury (or the Secretary's delegate) may prescribe and shall—

(i) be verified in the same manner as an application under section 6411(a) of such Code,

(ii) be filed prior to December 31, 2020, and

(iii) set forth—

(I) the amount of the refundable credit claimed under section 53(e) of such Code for such taxable year,

(II) the amount of the refundable credit claimed under such section for any previously filed return for such taxable year, and

(III) the amount of the refund claimed.

(B) Allowance of adjustments. Within a period of 90 days from the date on which an application is filed under subparagraph (A), the Secretary of the Treasury (or the Secretary's delegate) shall—

(i) review the application,

(ii) determine the amount of the overpayment, and

(iii) apply, credit, or refund such overpayment,

in a manner similar to the manner provided in section 6411(b) of the Internal Revenue Code of 1986.

(C) Consolidated returns. The provisions of section 6411(c) of the Internal Revenue Code of 1986 Code shall apply to an adjustment under this paragraph to the same extent and manner as the Secretary of the Treasury (or the Secretary's delegate) may provide.

§163(j) [as modified by §2306 of CARES Act]

(j) Limitation on business interest.

(1) In general. The amount allowed as a deduction under this chapter for any taxable year for business interest shall not exceed the sum of—

(A) the business interest income of such taxpayer for such taxable year,

(B) 30 percent of the adjusted taxable income of such taxpayer for such taxable year, plus

(C) the floor plan financing interest of such taxpayer for such taxable year.

The amount determined under subparagraph (B) shall not be less than zero.

(2) Carryforward of disallowed business interest. The amount of any business interest not allowed as a deduction for any taxable year by reason of paragraph (1) shall be treated as business interest paid or accrued in the succeeding taxable year.

(3) Exemption for certain small businesses. In the case of any taxpayer (other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 448(a)(3)) which meets the gross receipts test of section 448(c) for any taxable year, paragraph (1) shall not apply to such taxpayer for such taxable year. In the case of any taxpayer which is not a corporation or a partnership, the gross receipts test of section 448(c) shall be applied in the same manner as if such taxpayer were a corporation or partnership.

(4) Application to partnerships, etc.

(A) In general. In the case of any partnership—

(i) this subsection shall be applied at the partnership level and any deduction for business interest shall be taken into account in determining the non-separately stated taxable income or loss of the partnership, and

(ii) the adjusted taxable income of each partner of such partnership—

(I) shall be determined without regard to such partner's distributive share of any items of income, gain, deduction, or loss of such partnership, and

(II) shall be increased by such partner's distributive share of such partnership's excess taxable income.

For purposes of clause (ii)(II), a partner's distributive share of partnership excess taxable income shall be determined in the same manner as the partner's distributive share of nonseparately stated taxable income or loss of the partnership.

(B) Special rules for carryforwards.

(i) In general. The amount of any business interest not allowed as a deduction to a partnership for any taxable year by reason of paragraph (1) for any taxable year—

(I) shall not be treated under paragraph (2) as business interest paid or accrued by the partnership in the succeeding taxable year, and

(II) shall, subject to clause (ii), be treated as excess business interest which is allocated to each partner in the same manner as the non-separately stated taxable income or loss of the partnership.

(ii) Treatment of excess business interest allocated to partners. If a partner is allocated any excess business interest from a partnership under clause (i) for any taxable year—

(I) such excess business interest shall be treated as business interest paid or accrued by the partner in the next succeeding taxable year in which the partner is allocated excess taxable income from such partnership, but only to the extent of such excess taxable income, and

(II) any portion of such excess business interest remaining after the application of subclause (I) shall, subject to the limitations of subclause (I), be treated as business interest paid or accrued in succeeding taxable years.

For purposes of applying this paragraph, excess taxable income allocated to a partner from a partnership for any taxable year shall not be taken into account under paragraph (1)(A) with respect to any business interest other than excess business interest from the partnership until all such excess business interest for such taxable year and all preceding taxable years has been treated as paid or accrued under clause (ii).

(iii) Basis adjustments.

(I) In general. The adjusted basis of a partner in a partnership interest shall be reduced (but not below zero) by the amount of excess business interest allocated to the partner under clause (i)(II).

(II) Special rule for dispositions. If a partner disposes of a partnership interest, the adjusted basis of the partner in the partnership interest shall be increased immediately before the disposition by the amount of the excess (if any) of the amount of the basis reduction under subclause (I) over the portion of any excess business interest allocated to the partner under clause (i)(II) which has previously been treated under clause (ii) as business interest paid or accrued by the partner. The preceding sentence shall also apply to transfers of the partnership interest (including by reason of death) in a transaction in which gain is not recognized in whole or in part. No deduction shall be allowed to the transferor or transferee under this chapter for any excess business interest resulting in a basis increase under this subclause.

(C) Excess taxable income. The term “excess taxable income” means, with respect to any partnership, the amount which bears the same ratio to the partnership's adjusted taxable income as—

(i) the excess (if any) of—

(I) the amount determined for the partnership under paragraph (1)(B), over

(II) the amount (if any) by which the business interest of the partnership, reduced by the floor plan financing interest, exceeds the business interest income of the partnership, bears to

(ii) the amount determined for the partnership under paragraph (1)(B).

(D) Application to S corporations. Rules similar to the rules of subparagraphs (A) and (C) shall apply with respect to any S corporation and its shareholders.

(5) Business interest. For purposes of this subsection, the term "business interest" means any interest paid or accrued on indebtedness properly allocable to a trade or business. Such term shall not include investment interest (within the meaning of subsection (d)).

(6) Business interest income. For purposes of this subsection, the term "business interest income" means the amount of interest includible in the gross income of the taxpayer for the taxable year which is properly allocable to a trade or business. Such term shall not include investment income (within the meaning of subsection (d)).

(7) Trade or business. For purposes of this subsection—

(A) In general. The term "trade or business" shall not include—

(i) the trade or business of performing services as an employee,

(ii) any electing real property trade or business,

(iii) any electing farming business, or

(iv) the trade or business of the furnishing or sale of—

(I) electrical energy, water, or sewage disposal services,

(II) gas or steam through a local distribution system, or

(III) transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, by a public service or public utility commission or other similar body of any State or political subdivision thereof, or by the governing or ratemaking body of an electric cooperative.

(B) Electing real property trade or business. For purposes of this paragraph, the term "electing real property trade or business" means any trade or business which is described in section 469(c)(7)(C) and which makes an election under this subparagraph. Any such

election shall be made at such time and in such manner as the Secretary shall prescribe, and, once made, shall be irrevocable.

(C) Electing farming business. For purposes of this paragraph, the term "electing farming business" means—

(i) a farming business (as defined in section 263A(e)(4)) which makes an election under this subparagraph, or

(ii) any trade or business of a specified agricultural or horticultural cooperative (as defined in section 199A(g)(2)) with respect to which the cooperative makes an election under this subparagraph.

Any such election shall be made at such time and in such manner as the Secretary shall prscribe, and, once made, shall be irrevocable.

(8) Adjusted taxable income. For purposes of this subsection, the term "adjusted taxable income" means the taxable income of the taxpayer—

(A) computed without regard to—

(i) any item of income, gain, deduction, or loss which is not properly allocable to a trade or business,

(ii) any business interest or business interest income,

(iii) the amount of any net operating loss deduction under section 172,

(iv) the amount of any deduction allowed under section 199A, and

(v) in the case of taxable years beginning before January 1, 2022, any deduction allowable for depreciation, amortization, or depletion, and

(B) computed with such other adjustments as provided by the Secretary.

(9) Floor plan financing interest defined. For purposes of this subsection—

(A) In general. The term "floor plan financing interest" means interest paid or accrued on floor plan financing indebtedness.

(B) Floor plan financing indebtedness. The term "floor plan financing indebtedness" means indebtedness—

(i) used to finance the acquisition of motor vehicles held for sale or lease, and

(ii) secured by the inventory so acquired.

(C) Motor vehicle. The term "motor vehicle&eq means a motor vehicle that is any of the following:

(i) Any self-propelled vehicle designed for transporting persons or property on a public street, highway, or road.

(ii) A boat.

(iii) Farm machinery or equipment.

(10) Special rule for taxable years beginning in 2019 and 2020.

(A) In general.

(i) In general. Except as provided in clause (ii) or (iii), in the case of any taxable year beginning in 2019 or 2020, paragraph (1)(B) shall be applied by substituting '50 percent' for '30 percent'.

(ii) Special rule for partnerships. In the case of a partnership—

(I) clause (i) shall not apply to any taxable year beginning in 2019, but

(II) unless a partner elects not to have this subclause apply, in the case of any excess business interest of the partnership for any taxable year beginning in 2019 which is allocated to the partner under paragraph (4)(B)(i)(II)—

(aa) 50 percent of such excess business interest shall be treated as business interest which, notwithstanding paragraph (4)(B)(ii), is paid or accrued by the partner in the partner's first taxable year beginning in 2020 and which is not subject to the limits of paragraph (1), and

(bb) 50 percent of such excess business interest shall be subject to the limitations of paragraph (4)(B)(ii) in the same manner as any other excess business interest so allocated.

(iii) Election out. A taxpayer may elect, at such time and in such manner as the Secretary may prescribe, not to have clause (i) apply to any taxable year. Such an election, once made, may be revoked only with the consent of the Secretary. In the case of a partnership, any such election shall be made by the partnership and may be made only for taxable years beginning in 2020.

(B) Election to use 2019 adjusted taxable income for taxable years beginning in 2020.

(i) In general. Subject to clause (ii), in the case of any taxable year beginning in 2020, the taxpayer may elect to apply this subsection by substituting the adjusted taxable income of the taxpayer for the last taxable year beginning in 2019 for the adjusted taxable income for such taxable year. In the case of a partnership, any such election shall be made by the partnership.

(ii) Special rule for short taxable years. If an election is made under clause (i) for a taxable year which is a short taxable year, the adjusted taxable income for the

taxpayer's last taxable year beginning in 2019 which is substituted under clause (i) shall be equal to the amount which bears the same ratio to such adjusted taxable income determined without regard to this clause as the number of months in the short taxable year bears to 12.

(~~10~~11) Cross references.

(A) For requirement that an electing real property trade or business use the alternative depreciation system, see section 168(g)(1)(F) .

(B) For requirement that an electing farming business use the alternative depreciation system, see section 168(g)(1)(G) .

§168(e) and (g)(3)(B) [as modified by §2307 of CARES Act]

(e) Classification of property. For purposes of this section—

(1) In general. Except as otherwise provided in this subsection, property shall be classified under the following table:

Property shall be treated as:	**If such property has a class life (in years) of:**
3-year property	4 or less
5-year property	More than 4 but less than 10
7-year property	10 or more but less than 16
10-year property	16 or more but less than 20
15-year property	20 or more but less than 25
20-year property	25 or more.

(2) Residential rental or nonresidential real property.

(A) Residential rental property.

(i) Residential rental property. The term "residential rental property" means any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units.

(ii) Definitions. For purposes of clause (i)—

(I) the term "dwelling unit" means a house or apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one-half of the units in which are used on a transient basis, and

(II) if any portion of the building or structure is occupied by the taxpayer, the gross rental income from such building or structure shall include the rental value of the portion so occupied.

(B) Nonresidential real property. The term "nonresidential real property" means section 1250 property which is not—

(i) residential rental property, or

(ii) property with a class life of less than 27.5 years.

(3) Classification of certain property.

(A) 3-year property. The term "3-year property" includes—

(i) any race horse—

(I) which is placed in service before January 1, 2021, and

(II) which is placed in service after December 31, 2020, and which is more than 2 years old at the time such horse is placed in service by such purchaser,

(ii) any horse other than a race horse which is more than 12 years old at the time it is placed in service, and

(iii) any qualified rent-to-own property.

(B) 5-year property. The term "5-year property" includes—

(i) any automobile or light general purpose truck,

(ii) any semi-conductor manufacturing equipment,

(iii) any computer-based telephone central office switching equipment,

(iv) any qualified technological equipment,

(v) any section 1245 property used in connection with research and experimentation,

(vi) any property which—

(I) is described in subparagraph (A) of section 48(a)(3) (or would be so described if "solar or wind energy" were substituted for "solar energy" in clause (i) thereof and the last sentence of such section did not apply to such subparagraph),

(II) is described in paragraph (15) of section 48(l) (as in effect on the day before the date of the enactment [11/5/90] of the Revenue Reconciliation Act of 1990) and has a power production capacity of not greater than 80 megawatts, or

(III) is described in section 48(l)(3)(A)(ix) (as in effect on the date before the date of the enactment of the Revenue Reconciliation Act of 1990), and

(vii) any machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) which is used in a farming business (as defined in section 263A(e)(4)), the original use of which commences with the taxpayer after December 31, 2017.

Nothing in any provision of law shall be construed to treat property as not being described in subclause (I) or (II) of clause (vi) by reason of being public utility property.

(C) 7-year property. The term "7-year property" includes—

(i) any railroad track,

(ii) any motorsports entertainment complex,

(iii) any Alaska natural gas pipeline,

(iv) any natural gas gathering line the original use of which commences with the taxpayer after April 11, 2005, and

(v) any property which—

(I) does not have a class life, and

(II) is not otherwise classified under paragraph (2) or this paragraph .

(D) 10-year property. The term "10-year property" includes—

(i) any single purpose agricultural or horticultural structure (within the meaning of subsection (i)(13)),

(ii) any tree or vine bearing fruit or nuts,

(iii) any qualified smart electric meter, and

(iv) any qualified smart electric grid system.

(E) 15-year property. The term "15-year property" includes-

(i) any municipal wastewater treatment plant,

(ii) any telephone distribution plant and comparable equipment used for 2-way exchange of voice and data communications,

(iii) any section 1250 property which is a retail motor fuels outlet (whether or not food or other convenience items are sold at the outlet),

(iv) initial clearing and grading land improvements with respect to gas utility property,

(v) any section 1245 property (as defined in section 1245(a)(3)) used in the transmission at 69 or more kilovolts of electricity for sale and the original use of which commences with the taxpayer after April 11, 2005, ~~and~~

(vi) any natural gas distribution line the original use of which commences with the taxpayer after April 11, 2005, and which is placed in service before January 1, 2011~~.~~, and

(vii) any qualified improvement property.

(F) 20-year property. The term "20-year property" means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.

(4) Railroad grading or tunnel bore. The term "railroad grading or tunnel bore" means all improvements resulting from excavations (including tunneling), construction of embankments, clearings, diversions of roads and streams, sodding of slopes, and from similar work necessary to provide, construct, reconstruct, alter, protect, improve, replace, or restore a roadbed or right-of-way for railroad track.

(5) Water utility property. The term "water utility property" means property-

(A) which is an integral part of the gathering, treatment, or commercial distribution of water, and which, without regard to this paragraph, would be 20-year property, and

(B) any municipal sewer.

(6) Qualified improvement property.

(A) In general. The term "qualified improvement property" means any improvement made by the taxpayer to an interior portion of a building which is nonresidential real property if such improvement is placed in service after the date such building was first placed in service.

(B) Certain improvements not included. Such term shall not include any improvement for which the expenditure is attributable to—

(i) the enlargement of the building,

(ii) any elevator or escalator,

(iii) the internal structural framework of the building.

(7) Repealed.

(8) Repealed.

(g) Alternative depreciation system for certain property.

(1) In general. In the case of—

(A) any tangible property which during the taxable year is used predominantly outside the United States,

(B) any tax-exempt use property,

(C) any tax-exempt bond financed property,

(D) any imported property covered by an Executive order under paragraph (6),

(E) any property to which an election under paragraph (7) applies,

(F) any property described in paragraph (8), and

(G) any property with a recovery period of 10 years or more which is held by an electing farming business (as defined in section 163(j)(7)(C)),

the depreciation deduction provided by section 167(a) shall be determined under the alternative depreciation system.

(2) Alternative depreciation system. For purposes of paragraph (1), the alternative depreciation system is depreciation determined by using—

(A) the straight line method (without regard to salvage value),

(B) the applicable convention determined under subsection (d), and

(C) a recovery period determined under the following table:

In the case of:	**The recovery period shall be:**
(i) Property not described in clause (ii) or (iii)	The class life.
(ii) Personal property with no class life	12 years.
(iii) Residential rental property	30 years.
(iv) Nonresidential real property	40 years.
(v) Any railroad grading or tunnel bore or water utility property	50 years.

(3) Special rules for determining class life.

(A) Tax-exempt use property subject to lease. In the case of any tax-exempt use property subject to a lease, the recovery period used for purposes of paragraph (2) shall (notwithstanding any other subparagraph of this paragraph) in no event be less than 125 percent of the lease term.

(B) Special rule for certain property assigned to classes. For purposes of paragraph (2) , in the case of property described in any of the following subparagraphs of subsection (e)(3) , the class life shall be determined as follows:

If property is described in subparagraph:	The class life is:
(A)(iii)	4
(B)(ii)	5
(B)(iii)	9.5
(B)(vii)	10
(C)(i)	10
(C)(iii)	22
(C)(iv)	14
(D)(i)	15
(D)(ii)	20
~~(D)(v)~~	~~20~~
(E)(i)	24
(E)(ii)	24
(E)(iii)	20
(E)(iv)	20
(E)(v)	30
(E)(vi)	35
(E)(vii)	20
(E)(vii)	30
(E)(viii)	35
(E)(ix)	39
(F)	25

(C) Qualified technological equipment. In the case of any qualified technological equipment, the recovery period used for purposes of paragraph (2) shall be 5 years.

(D) Automobiles, etc. In the case of any automobile or light general purpose truck, the recovery period used for purposes of paragraph (2) shall be 5 years.

(E) Certain real property. In the case of any section 1245 property which is real property with no class life, the recovery period used for purposes of paragraph (2) shall be 40 years.

(4) Exception for certain property used outside United States. Subparagraph (A) of paragraph (1) shall not apply to—

(A) any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States or is operated under contract with the United States;

(B) rolling stock which is used within and without the United States and which is—

(i) of a rail carrier subject to part A of subtitle IV of title 49, or

(ii) of a United States person (other than a corporation described in clause (i)) but only if the rolling stock is not leased to one or more foreign persons for periods aggregating more than 12 months in any 24-month period;

(C) any vessel documented under the laws of the United States which is operated in the foreign or domestic commerce of the United States;

(D) any motor vehicle of a United States person (as defined in section 7701(a)(30)) which is operated to and from the United States;

(E) any container of a United States person which is used in the transportation of property to and from the United States;

(F) any property (other than a vessel or an aircraft) of a United States person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; (43 U.S.C. 1331));

(G) any property which is owned by a domestic corporation or by a United States citizen (other than a citizen entitled to the benefits of section 931 or 933) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States;

(H) any communications satellite (as defined in section 103(3) of the Communications Satellite Act of 1962, 47 U.S.C. 702(3)), or any interest therein, of a United States person;

(I) any cable, or any interest therein, of a domestic corporation engaged in furnishing telephone service to which section 168(i)(10)(C) applies (or of a wholly owned domestic subsidiary of such a corporation), if such cable is part of a submarine cable system which constitutes part of a communication link exclusively between the United States and one or more foreign countries;

(J) any property (other than a vessel or an aircraft) of a United States person which is used in international or territorial waters within the northern portion of the Western Hemisphere for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or deposits under such waters;

(K) any property described in section 48(l)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) which is owned by a United States person and which is used in international or territorial waters to generate energy for use in the United States; and

(L) any satellite (not described in subparagraph (H)) or other spacecraft (or any interest therein) held by a United States person if such satellite or other spacecraft was launched from within the United States.

For purposes of subparagraph (J) , the term "northern portion of the Western Hemisphere" means the area lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any foreign country which is a country of South America.

(5) Tax-exempt bond financed property. For purposes of this subsection—

(A) In general. Except as otherwise provided in this paragraph, the term "tax-exempt bond financed property" means any property to the extent such property is financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a) .

(B) Allocation of bond proceeds. For purposes of subparagraph (A) , the proceeds of any obligation shall be treated as used to finance property acquired in connection with the issuance of such obligation in the order in which such property is placed in service.

(C) Qualified residential rental projects. The term "tax-exempt bond financed property" shall not include any qualified residential rental project (within the meaning of section 142(a)(7)).

(6) Imported property.

(A) Countries maintaining trade restrictions or engaging in discriminatory acts. If the President determines that a foreign country-

(i) maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements, or

(ii) engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce,

the President may by Executive order provide for the application of paragraph (1)(D) to any article or class of articles manufactured or produced in such foreign country for such period as may be provided by such Executive order. Any period specified in the preceding sentence shall not apply to any property ordered before (or the construction, reconstruction, or erection of which began before) the date of the Executive order unless the President determines an earlier date to be in the public interest and specifies such date in the Executive order.

(B) Imported property. For purposes of this subsection , the term "imported property" means any property if-

(i) such property was completed outside the United States, or

(ii) less than 50 percent of the basis of such property is attributable to value added within the United States.

For purposes of this subparagraph , the term "United States" includes the Commonwealth of Puerto Rico and the possessions of the United States.

(7) Election to use alternative depreciation system.

(A) In general. If the taxpayer makes an election under this paragraph with respect to any class of property for any taxable year, the alternative depreciation system under this subsection shall apply to all property in such class placed in service during such taxable year. Notwithstanding the preceding sentence, in the case of nonresidential real property or residential rental property, such election may be made separately with respect to each property.

(B) Election irrevocable. An election under subparagraph (A) , once made, shall be irrevocable.

(8) Electing real property trade or business. The property described in this paragraph shall consist of any nonresidential real property, residential rental property, and qualified improvement property held by an electing real property trade or business (as defined in 163(j)(7)(B)).