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December 9, 2020

The Honorable Chuck Grassley
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service: Additional First Year Depreciation Deduction*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Internal Revenue Service (IRS) entitled “Additional First Year Depreciation Deduction” (RIN: 1545-BP32). We received the rule on November 10, 2020. It was published in the *Federal Register* as final regulations on November 10, 2020. 85 Fed. Reg. 71734. The stated effective date of the rule is January 11, 2021.

The final rule provides guidance regarding the additional first year depreciation deduction under section 168(k) of the Internal Revenue Code. IRS stated that the rule reflects and further clarifies the increased deduction and the expansion of qualified property, particularly to certain classes of used property, authorized by the Tax Cuts and Jobs Act. Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017). IRS further stated that the rule generally affects taxpayers who depreciate qualified property acquired and placed in service after September 27, 2017.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule was published on November 10, 2020. 85 Fed. Reg. 71734. The Senate received the rule on November 16, 2020. 166 Cong. Rec. 7137 (daily ed. Dec. 1, 2020). To date, the *Congressional Record* does not reflect the date of receipt by the House of Representatives. The rule has a stated effective date of January 11, 2021. Therefore the rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of IRS’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the

subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Carrie Mudd
Director, Legal Processing Division
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE
ENTITLED
“ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION”
(RIN: 1545-BP32)

(i) Cost-benefit analysis

The Internal Revenue Service (IRS) assessed the benefits and costs of this final rule relative to a no-action baseline reflecting anticipated federal income tax-related behavior in the absence of the rule. IRS stated that the rule provides certainty and consistency in the application of section 168(k) of the Internal Revenue Code by providing definitions and clarifications regarding the statute’s terms and rules. In the absence of the rule, the chance that different taxpayers might interpret the statute differently from each other or differently from the interpretation Congress intended is exacerbated, which could lead to an economic loss, according to IRS. IRS further stated that by mitigating the chance for differential or inaccurate interpretations, the rule increases economic efficiency. Additionally, according to IRS, the possible reduction in effective tax rates resulting from the rule is generally projected to increase economic activity by certain taxpayers relative to the no-action baseline.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

IRS certified that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

IRS stated that section 202 of the Act requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately \$154 million, according to IRS. IRS stated that this final rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector, in excess of that threshold.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On September 24, 2019, IRS published a proposed rule. 84 Fed. Reg. 50152. IRS received written and electronic comments and held a public hearing on the proposed rule on November 13, 2019. IRS responded to comments in this final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

IRS determined that this final rule contains information collection requirements (ICRs) under PRA. The ICRs are associated with Form 1040 (Office of Management and Budget (OMB) Control Number 1545-0074), Form 1041 (OMB Control Number 1545-0092) and Forms 1065 and 1120 (OMB Control Number 1545-0123). IRS stated that the overall burden estimates for the OMB control numbers are aggregate amounts that relate to the entire package of forms associated with the applicable OMB control number and will in the future include, but not isolate, the estimated burden of the tax forms that will be created or revised as a result of the ICRs in the rule.

Statutory authorization for the rule

IRS promulgated this final rule under the authority of section 7805 of title 26, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

IRS stated that this final rule has been designated as subject to review under the Order pursuant to the Memorandum of Agreement (MOA) dated April 11, 2018, between the Treasury Department and OMB regarding review of tax regulations. IRS further stated that the Office of Information and Regulatory Affairs within OMB has designated the rule as economically significant under section 1(c) of MOA and, accordingly, OMB has reviewed the rule.

Executive Order No. 13132 (Federalism)

IRS determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.