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Thank you for the opportunity to speak before you today. My name is Joe Magyar and I am a CPA and Partner with Crowe LLP. I am speaking today on behalf of the National Automobile Dealers Association. NADA represents over 16,000 franchised dealers located in all 50 states who sell, finance and service new and used vehicles. The members of NADA employ over 1.1 million people nationwide and most members are small businesses under the Small Business Administration's definition.

These verbal comments are a supplement to our written comments regarding the Proposed Regulations under Section 168(k).

NADA and its members fully support the tax saving provisions of Section 168(k) that allow for Bonus Depreciation and the provisions of Section 163(j)(9)(C) that allow for the full deduction of interest related to floor plan financing indebtedness. We understand that automobile dealerships may not be allowed to deduct both Bonus Depreciation and floor plan interest based on Section 168(k)(9)(B). However, there are several possible consequences that we believe are unintended.

These consequences fall into three categories. First, there are dealerships that would be able to deduct either all or most of their business interest expense including floorplan interest without the provision of Section 163(j)(9)(C). The second category are dealerships who have real estate leasing companies that should not be affected by the provisions of Section 168(k)(9)(B). The final category are dealerships that have transactions that will be treated unfairly if Bonus Depreciation is completely denied.

#### Floorplan Interest Exception and Bonus Depreciation

Most dealerships incur interest on floor plan financing and these dealerships may want to deduct interest that exceeds the normal limits and take advantage of the additional deduction allowed by Section 163(j)(1)(C).

However, many dealerships with floor plan interest will have little or no benefit from Section 163(j)(1)(C). Such dealerships include those that either have total interest expense, including interest on floor plan financing, that is totally deductible under limits that are generally applicable to other taxpayers or would be willing to forego any additional deduction under the provisions of Section 163(j)(1)(C). In these situations, the dealers should be able to deduct Bonus Depreciation the same as similarly situated taxpayers that do not have interest on floor plan financing. These dealerships not be considered to have taken into account floorplan interest expense under Section 163(j)(1)(C).

Crowe and NADA believe that use of the words "taken into account" in Section 168(k)(9)(B) can only be read to mean that Bonus Depreciation is disallowed if, and only if, the dealership actually deducts floor plan interest under the provisions of Section 163(j)(1)(C) and that such deduction is in excess of what would be deductible absent the existence of subparagraph (C). Therefore, Crowe and NADA believe that the regulations should be affirmatively state that for a taxable year when a taxpayer does not deduct floor plan interest in excess of what would be deductible under Section 163(j)(1)(A) and (B), (i.e. the 30% limitation), the taxpayer is allowed Bonus Depreciation deductions under Section 168(k) and the provisions of Section 168(k)(9)(B) do not apply.

Our comment letter provides more information about the benefits to the US economy of floor plan financing and how Congress came to include the special deduction for floor plan interest. This was very well intended and appreciated and we do not believe that Congress intended to penalize dealers. We urge that the regulations clarify that dealers can choose to either deduct their entire floor plan interest

without limit well taking no deduction for Bonus Depreciation or deduct interest, including floor plan interest within the 30% limitation and also deduct Bonus Depreciation.

#### Related but Separate Real Estate Companies

Dealers frequently hold real estate for their dealership operations in an entity separate from the dealership business. There are good business reasons for doing this and it allows dealers to have different ownership in the real estate company and the dealership. While there may be common ownership in the related entities, the ownership may not be identical. The real estate company and dealership business typically file separate federal income tax returns.

Some of the property that is leased to the dealership may otherwise qualify for Bonus Depreciation. The related dealership may have floor plan interest deducted under Section 163(j)(1)(C).

While Bonus Depreciation is not allowed for the dealership business that takes into account floor plan interest under Section 163(j)(1)(C), the related real estate company is not in a trade or business that has floor plan interest. Furthermore, the treatment should be no different for an unrelated entity that leases property to a dealership with floor plan interest.

We urge that the regulations clarify that real estate rental companies under these circumstances qualify for Bonus Depreciation. We believe that this would be consistent with the proposed regulations Section 1.168(k)-2(b)(3)(iii)(B) as the dealership does not have a depreciable interest in the property.

#### Like Kind Exchanges

The Tax Cuts and Jobs Act eliminates the benefit of like kind exchange for all property except real property. Under prior law, like kind exchange treatment allowed taxpayers, such as those that purchased fleets of vehicles for leasing, especially heavy-duty trucks, to trade-in their existing vehicles in exchange for new vehicles and defer the gain on the trade-ins. Since these businesses were trading up for new vehicles, like kind exchange treatment made it possible for them to improve their over-the-road fleet of vehicles and provide economic stimulus for the truck dealers, manufacturers and suppliers. Under the new law, there will be a tax penalty for such upgrades, and it is likely that economic activity for new trucks may be reduced.

For most other taxpayers, the elimination of deferral from like kind exchanges will be offset by the allowance for Bonus Depreciation. The net effect is that the taxpayer may not pay any additional tax. However, taxpayers that deduct floor plan interest under Section 163(j)(1)(C) are denied the Bonus Depreciation deduction while the gain upon disposal of the relinquished property is taxed.

Dealerships that have a fleet vehicle leasing activity and also deduct floor plan interest under Section 163(j)(1)(C) are denied the Bonus Depreciation related to their leasing activities and will face a significant tax increase, especially in tax years 2018 – 2020 as they trade-in their vehicles and update their leasing fleets. As a result of this negative economic consequence, fleet turnover will be delayed.

We urge that the regulations include a provision that allows dealerships that purchase replacement property for use in their fleet of rental or leased vehicles be allowed to deduct Bonus Depreciation in transactions similar to like kind exchanges when at least 10 vehicles are traded in during a taxable year. This would facilitate the purchase of new vehicles, which is consistent with the underlying intent of the Tax Cuts and Jobs Act.

Thanks for listening and I hope that you are able to address these concerns.