

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 1.179-1: Election to expense certain depreciable assets.
(Also: §§ 168, 179; 1.168(k)-1)

Rev. Proc. 2008-54

SECTION 1. PURPOSE

This revenue procedure provides guidance under §§ 102 and 103 of the Economic Stimulus Act of 2008, Pub. L. No. 110-185, 122 Stat. 613 (February 13, 2008) (Stimulus Act). Section 102 of the Stimulus Act amends § 179 of the Internal Revenue Code by increasing the dollar limitations that apply to taxpayers who elect to expense certain depreciable assets under § 179 for taxable years beginning in 2008 (Stimulus § 179 deduction). Section 103 of the Stimulus Act amends § 168(k) of the Code to allow a 50-percent additional first year depreciation for certain new property acquired and placed in service during 2008 (Stimulus additional first year depreciation deduction).

This revenue procedure also announces that the Internal Revenue Service and the Treasury Department intend to amend § 1.179-5(c) of the Income Tax Regulations to

permit taxpayers to make an election under § 179 without the consent of the Commissioner of Internal Revenue on an amended return for taxable years beginning after 2007.

SECTION 2. BACKGROUND

.01 Section 179(a) allows a taxpayer to elect to treat as an expense the cost of any § 179 property that is not chargeable to capital account. Section 179(b) prescribes a dollar limitation on the aggregate cost of § 179 property that can be treated as an expense. The dollar limitation is the amount under § 179(b)(1) (\$125,000 for any taxable year beginning after 2006 and before 2011), reduced by the amount under § 179(b)(2) (the amount by which the cost of § 179 property placed in service during the taxable year exceeds \$500,000 for any taxable year beginning after 2006 and before 2011), with both amounts adjusted annually for inflation. For taxable years beginning in 2008, section 3.20 of Rev. Proc. 2007-66, 2007-45 I.R.B. 970, 975, provides that the amounts provided in § 179(b)(1) and (2), adjusted for inflation, are \$128,000 and \$510,000, respectively.

Section 102(a) of the Stimulus Act added § 179(b)(7) to the Code. For any taxable year beginning in 2008, § 179(b)(7) changes the amount provided in § 179(b)(1) to \$250,000 and the amount provided in § 179(b)(2) to \$800,000. Section 179(b)(7) also provides that these amounts will not be adjusted for inflation. This revenue procedure modifies Rev. Proc. 2007-66 to reflect these statutory changes to § 179 (see section 3 of this revenue procedure).

.02 Under § 179(d)(8), the limitations of § 179(b) apply to a partnership and to

each partner, and in similar fashion apply to an S corporation and each of its shareholders. In the case of a partnership, § 1.179-2(b)(3)(iv) provides that the partner's distributive share of the partnership's § 179 expenses for the partnership's taxable year is taken into account in the partnership's taxable year that ends with or within the partner's taxable year. Similar rules apply in the case of S corporations and their shareholders. Section 1.179-2(b)(4). Thus, when the taxable years of a partnership (or an S corporation) and a partner (or an S corporation shareholder) do not coincide, each will be subject to a different dollar limitation under § 179(b)(1) and (2). This revenue procedure clarifies the application of the § 179(b)(1) limitation of \$250,000 for the Stimulus § 179 deduction to partners (or S corporation shareholders) that are calendar-year taxpayers and have interests in partnerships (or S corporations) with taxable years beginning in 2008 and ending in 2009 (see section 4 of this revenue procedure).

.03 Prior to the enactment of the Stimulus Act, § 168(k)(1) provided a 30-percent additional first year depreciation deduction for qualified property acquired after September 10, 2001, and before January 1, 2005. Section 103 of the Stimulus Act amends § 168(k) to allow a taxpayer to claim the Stimulus additional first year depreciation deduction for certain new property acquired by the taxpayer after 2007 and placed in service by the taxpayer before 2009 (before 2010 in the case of property described in § 168(k)(2)(B) or (C)). Section 103 of the Stimulus Act also provides that the amount of the Stimulus additional first year depreciation allowance is 50 percent. With the exception of the increased amounts and the revised dates, the rules for

determining whether depreciable property is eligible for the Stimulus additional first year depreciation deduction are the same as the rules in § 168(k) in effect before the enactment of the Stimulus Act. This revenue procedure clarifies the application of the revised rules (see section 5 of this revenue procedure).

.04 Section 1400N(d) provides a 50-percent additional first year depreciation deduction (GO Zone additional first year depreciation deduction) for qualified Gulf Opportunity Zone property placed in service by the taxpayer on or before December 31, 2007 (December 31, 2008, in the case of nonresidential real property and residential rental property) (GO Zone property). Section 1400N(d)(6) provides that in the case of any specified GO Zone extension property (GO Zone extension property), the placed-in-service date is extended to December 31, 2010. Section 103(c)(10) of the Stimulus Act amends § 1400N(d)(6) by providing that GO Zone extension property shall not include any property to which § 168(k) applies.

Section 1400N(e)(1) provides that, for purposes of § 179, the dollar amount in effect under § 179(b)(1) for the taxable year is increased by the lesser of \$100,000, or the cost of qualified § 179 Gulf Opportunity Zone property (§ 179 GO Zone property) placed in service during the taxable year, and the dollar amount in effect under § 179(b)(2) for the taxable year is increased by the lesser of \$600,000, or the cost of § 179 GO Zone property placed in service during the taxable year.

Section 15345 of the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651 (June 18, 2008) (Farm Bill) provides a 50-percent additional first year depreciation deduction for certain property substantially used in the Kansas

disaster area. Section 15345 of the Farm Bill also extends the increased § 179 amounts provided for § 179 GO Zone property to certain property substantially used in the Kansas disaster area.

.05 This revenue procedure clarifies:

- (1) how the Stimulus § 179 deduction interacts with the increased § 179 amounts provided under § 1400N(e) for certain § 179 GO Zone property placed in service during 2008 (see section 6.01(1) of this revenue procedure);
- (2) how the Stimulus additional first year depreciation deduction interacts with the GO Zone additional first year depreciation deduction for GO Zone property, including GO Zone extension property, placed in service during 2008 (see section 6.01(2) of this revenue procedure);
- (3) how the Stimulus § 179 deduction interacts with the increased § 179 amounts applicable to the Kansas disaster area (see section 6.02(1) of this revenue procedure); and
- (4) how the Stimulus additional first year depreciation deduction interacts with the 50-percent additional first year depreciation deduction applicable to the Kansas disaster area (see section 6.02(2) of this revenue procedure).

.06 Section 179(c) provides the rules for making and revoking elections under § 179 (§ 179 election). Pursuant to § 179(c)(1), a § 179 election is made in the manner prescribed by regulations. Prior to 2006, § 179(c)(2) provided that a § 179 election for taxable years beginning after 2002 and before 2008 may be revoked by the taxpayer with respect to any § 179 property. Section 1.179-5(c)(1) provides that for any taxable

year beginning after 2002 and before 2008, a taxpayer is permitted to make or revoke a § 179 election without the consent of the Commissioner on an amended federal tax return for that taxable year.

Section 101 of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222, 120 Stat. 345 (2006) and § 8212(a) of the Small Business and Work Opportunity Tax Act of 2007, Pub. L. No. 110-28, 121 Stat. 112 (2007) amended § 179(c)(2) by extending from “2008” to “2011” the rules for revoking a § 179 election. Section 1.179-5(c) was promulgated in 2005 and has not been amended to reflect the extension to 2011. Therefore, some taxpayers are uncertain about whether a § 179 election for taxable years beginning after 2007 may be made on an amended federal tax return. This revenue procedure provides the rules for making such a § 179 election (see section 7 of this revenue procedure).

SECTION 3. MODIFICATION OF SECTION 3.20 OF REV. PROC. 2007-66

To reflect the statutory changes made to § 179 by § 102 of the Stimulus Act, section 3.20 of Rev. Proc. 2007-66 is modified to read as follows:

.20 Election to Expense Certain Depreciable Assets. For any taxable year beginning in 2008, under § 179(b)(1) the aggregate cost of any § 179 property a taxpayer may elect to treat as an expense cannot exceed \$250,000. Under § 179(b)(2) the \$250,000 limitation is reduced (but not below zero) by the amount by which the cost of § 179 property placed in service during the 2008 taxable year exceeds \$800,000.

SECTION 4. APPLICATION OF § 179(b)(1) STIMULUS ACT LIMITATION WHEN TAXABLE YEARS OF PASSTHROUGH ENTITY AND ITS PARTNERS OR

SHAREHOLDERS DO NOT COINCIDE

.01 In General. For any taxable year beginning in 2008, the § 179(b)(1) limitation under the Stimulus Act is \$250,000. For taxable years beginning in 2009, the § 179(b)(1) limitation will be \$125,000 plus an additional amount determined in accordance with the inflation adjustment provision of § 179(b)(5) (2009 § 179(b)(1) dollar limitation).

.02 Application of § 179(b)(1) Limitation in Taxable Years 2008 and 2009 to Passthrough Entity and Its Partners or Shareholders with Different Taxable Years.

(1) Partnership or S corporation. A partnership or an S corporation (passthrough entity) with a taxable year beginning in 2007 and ending in 2008 is subject to the § 179(b)(1) limitation of \$125,000 for § 179 property placed in service by the passthrough entity during that taxable year. A passthrough entity with a taxable year beginning in 2008 and ending in 2009 is subject to the § 179(b)(1) limitation under the Stimulus Act of \$250,000 for § 179 property placed in service by the passthrough entity during that taxable year.

(2) Partner or S corporation shareholder. Pursuant to § 1.179-2(b)(3)(iv), a partner or a S corporation shareholder that is a calendar-year taxpayer is subject to the § 179(b)(1) limitation under the Stimulus Act of \$250,000 for (a) § 179 property placed in service by the partner or the S corporation shareholder during 2008 and (b) its allocable share of the § 179 deduction from any partnership or S corporation with a taxable year ending in 2008. Similarly, a partner or S corporation shareholder that is a calendar-year taxpayer is subject to the 2009 § 179(b)(1) dollar limitation for (a) § 179

property placed in service by the partner or S corporation shareholder during 2009 and (b) its allocable share of the § 179 deduction from any partnership or S corporation with a taxable year ending in 2009.

(3) Example. The following example illustrates the provisions of this section 4.

Example. XY, an S corporation, has a taxable year beginning April 1, 2008, and ending March 31, 2009. X, a calendar-year taxpayer, is the sole shareholder of XY. X is engaged in the active conduct of XY's trade or business. X does not own any interests in any other partnerships or S corporations. Further, X is not engaged in the active conduct of any other trades or businesses. XY purchases only one item of § 179 property, costing \$250,000, during its taxable year beginning April 1, 2008, and ending March 31, 2009, and places this § 179 property in service on April 18, 2008. For its taxable year beginning April 1, 2008, and ending March 31, 2009, XY elects under § 179 to expense the \$250,000 cost of that § 179 property and allocates its § 179 deduction of \$250,000 to X. Because XY's taxable year ends within X's 2009 taxable year, X cannot claim its share of the \$250,000 attributable to XY's § 179 deduction until X's 2009 taxable year. As a result, X is subject to the 2009 § 179(b)(1) dollar limitation, instead of the Stimulus Act limitation of \$250,000, for its taxable year beginning in 2009.

SECTION 5. STIMULUS ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION

.01 Application of § 1.168(k)-1. For purposes of the Stimulus additional first year depreciation deduction, rules similar to the rules in § 1.168(k)-1 for "qualified property" or for "30-percent additional first year depreciation deduction" apply. However, in applying § 1.168(k)-1(d)(1)(i), the computation of the allowable Stimulus additional first

year depreciation deduction is made in accordance with the rules for 50-percent bonus depreciation property.

.02 Certain Aircraft. For aircraft described in § 168(k)(2)(C), the nonrefundable deposit requirement in § 168(k)(2)(C)(iii) is satisfied if the purchaser, at the time of the purchase contract, has made a nonrefundable deposit of at least the lesser of 10 percent of the cost of the aircraft or \$100,000.

SECTION 6. INTERACTION OF THE STIMULUS ACT WITH CERTAIN TAX INCENTIVES FOR GO ZONE AND KANSAS DISASTER AREA

.01 Stimulus Act and GO Zone.

(1) Section 179.

(a) In general. Section 1400N(e)(1) provides that, for purposes of § 179, the dollar amount in effect under § 179(b)(1) for the taxable year is increased by the lesser of \$100,000, or the cost of § 179 GO Zone property placed in service during the taxable year, and the dollar amount in effect under § 179(b)(2) for the taxable year is increased by the lesser of \$600,000, or the cost of § 179 GO Zone property placed in service during the taxable year.

(b) Section 179 GO Zone property substantially used in specified portions of the GO Zone. For any taxable year beginning in 2008, the only § 179 GO Zone property eligible for the increased § 179 amounts under § 1400N(e)(1) is § 179 GO Zone property substantially all of the use of which is in one or more specified portions of the GO Zone (as defined in § 1400N(d)(6) and section 3 of Notice 2007-36, 2007-17 I.R.B. 1000) and placed in service by the taxpayer on or before December 31, 2008.

For all such § 179 GO Zone property, the § 179(b)(1) dollar amount for any taxable year beginning in 2008 is \$250,000, increased by the lesser of \$100,000, or the cost of that property placed in service during that taxable year, and the § 179(b)(2) dollar amount for any taxable year beginning in 2008 is \$800,000, increased by the lesser of \$600,000, or the cost of that property placed in service during that taxable year.

Accordingly, for all § 179 GO Zone property described in this section 6.01(1)(b), the maximum § 179(b)(1) and § 179(b)(2) amounts available for any taxable year beginning in 2008 are \$350,000 and \$1,400,000, respectively.

(c) Other § 179 GO Zone property. For all § 179 GO Zone property (other than the property described in section 6.01(1)(b) of this revenue procedure) placed in service by the taxpayer during any taxable year beginning in 2008, the maximum § 179(b)(1) and § 179(b)(2) amounts available for that taxable year are \$250,000 and \$800,000, respectively. For all § 179 GO Zone property placed in service by the taxpayer during any taxable year beginning in 2007 and ending in 2008, the § 179(b)(1) dollar amount is \$125,000, increased by the lesser of \$100,000, or the cost of that property placed in service during that taxable year, and the § 179(b)(2) dollar amount is \$500,000, increased by the lesser of \$600,000, or the cost of that property placed in service during that taxable year. Accordingly, for all § 179 GO Zone property placed in service by the taxpayer during any taxable year beginning in 2007 and ending in 2008, the maximum § 179(b)(1) and § 179(b)(2) amounts available for that taxable year are \$225,000 and \$1,100,000, respectively.

(2) Additional first year depreciation deduction.

(a) Nonresidential real property or residential rental property. Except for qualified leasehold improvement property (as defined in § 168(k)(3) and § 1.168(k)-1(c)), the Stimulus additional first year depreciation deduction does not apply to nonresidential real property or residential rental property. Accordingly, in the case of nonresidential real property or residential rental property (other than qualified leasehold improvement property) that is GO Zone property or GO Zone extension property, the rules under § 1400N(d) apply (including the self-constructed property rules under § 1400N(d)(3), as amended by the Stimulus Act).

(b) Other property.

(i) GO Zone extension property. For the taxable year beginning after 2007, the only property to which both §§ 168(k) and 1400N(d) apply is GO Zone extension property that is described in § 1400N(d)(6)(B)(ii)(II), is new property, is acquired by the taxpayer after 2007, and is placed in service by the taxpayer before 2009. For such property, the rules under § 168(k) apply. For all other GO Zone extension property described in § 1400N(d)(6)(B)(ii)(II) (including used property), the rules under § 1400N(d) apply.

(ii) GO Zone property other than GO Zone extension property. Because the GO Zone additional first year depreciation deduction has expired for GO Zone property described in § 1400N(d)(2)(A)(i)(I) (other than GO Zone extension property), the rules under § 168(k) apply to such property.

.02 Stimulus Act and Kansas Disaster Area.

(1) Section 179 property.

(a) In general. Sections 15345(a)(2) and (d)(2) of the Farm Bill increased the dollar amounts under § 179(b)(1) and (b)(2) that are available to taxpayers for qualified § 179 Recovery Assistance property (§ 179 RA property) placed in service by the taxpayer on or before December 31, 2008. Section 179 RA property is § 179 property (as defined in § 179(d) and § 1.179-4(a)) that is qualified Recovery Assistance property (as defined in § 1400N(d)(2) and in sections 2.02 and 2.03 of Notice 2008-67, 2008-32 I.R.B. xx (August 11, 2008)). See § 1400N(e)(2)(A). Section 15345(d)(2) provides that, with the exception of newly revised dates for determining the eligibility of § 179 RA property, the rules for determining the eligibility of the increased dollar amounts under § 179(b)(1) and (b)(2) that are available to taxpayers for § 179 RA property will be determined by following § 1400N(e) (other than § 1400N(e)(2)(B)). Accordingly, for purposes of § 179, the dollar amount in effect under § 179(b)(1) for the taxable year is increased by the lesser of \$100,000, or the cost of § 179 RA property placed in service during the taxable year, and the dollar amount in effect under § 179(b)(2) for the taxable year is increased by the lesser of \$600,000, or the cost of § 179 RA property placed in service during the taxable year.

(b) Section 179 RA property placed in service during any taxable year beginning in 2008. For all § 179 RA property placed in service by a taxpayer during any taxable year beginning in 2008, the § 179(b)(1) dollar amount is \$250,000, increased by the lesser of \$100,000, or the cost of that property placed in service during that taxable year, and the § 179(b)(2) dollar amount is \$800,000, increased by the lesser of \$600,000, or the cost of that property placed in service during that taxable year.

Accordingly, for all § 179 RA property described in this section 6.01(2)(b), the maximum § 179(b)(1) and § 179(b)(2) amounts available for any taxable year beginning in 2008 are \$350,000 and \$1,400,000, respectively.

(c) Other § 179 RA property. For all § 179 RA property placed in service by the taxpayer during any taxable year beginning in 2007 and ending in 2008, the § 179(b)(1) dollar amount is \$125,000, increased by the lesser of \$100,000, or the cost of that property placed in service during that taxable year, and the § 179(b)(2) dollar amount is \$500,000, increased by the lesser of \$600,000, or the cost of that property placed in service during that taxable year. Accordingly, for all § 179 RA property placed in service by the taxpayer during any taxable year beginning in 2007 and ending in 2008, the maximum § 179(b)(1) and § 179(b)(2) amounts available for that taxable year are \$225,000 and \$1,100,000, respectively.

(2) Additional first year depreciation deduction.

(a) In general. Sections 15345(a)(1) and (d)(1) of the Farm Bill allow a 50-percent additional first year depreciation deduction (Kansas additional first year depreciation deduction) for qualified Recovery Assistance property (RA property) acquired by the taxpayer after May 4, 2007, and placed in service by the taxpayer before 2009 (2010, in the case of qualified nonresidential real property and residential rental property). Section 15345(d)(1) provides that, with the exception of newly revised dates for determining the eligibility of the Kansas additional first year depreciation deduction for RA property, the rules for determining the eligibility of the Kansas additional first year depreciation deduction for RA property will be determined by

following § 1400N(d)(1) through (5). For more details about the Kansas additional first year depreciation deduction, see Notice 2008-67, 2008-32 I.R.B. 307 (August 11, 2008).

(b) Nonresidential real property or residential rental property. Except for qualified leasehold improvement property (as defined in § 168(k)(3) and §1.168(k)-1(c)), the Stimulus additional first year depreciation deduction does not apply to nonresidential real property or residential rental property. Accordingly, in the case of nonresidential real property or residential rental property (other than qualified leasehold improvement property) that is RA property, the rules under § 1400N(d) apply (including the self-constructed property rules under § 1400N(d)(3), as amended by the Stimulus Act).

(c) Other RA property. If property qualifies for both the Kansas additional first year depreciation deduction and the Stimulus additional first year depreciation deduction, only one additional first year depreciation deduction is allowable for that property. For a taxable year beginning after 2007, the only property to which § 15345(a)(1) and (d)(1) of the Farm Bill and § 168(k) apply is RA property that is described in § 1400N(d)(2)(A)(i)(I), is new property, is acquired by the taxpayer after 2007, and is placed in service by the taxpayer before 2009. For such property, the rules under § 168(k) apply. For all other RA property described in § 1400N(d)(2)(A)(i)(I) (including used property), the rules under § 1400N(d) apply.

SECTION 7. MAKING SECTION 179 ELECTIONS BY AMENDED RETURNS FOR TAXABLE YEARS BEGINNING AFTER 2007

For any taxable year beginning after 2007 and before the last year provided in § 179(c)(2) for revoking a § 179 election by a taxpayer with respect to any § 179

property, the taxpayer will be permitted to make a § 179 election without the Commissioner's consent on an amended federal tax return for that taxable year. Currently, the last year provided in § 179(c)(2) is 2011. The Internal Revenue Service and the Treasury Department intend to amend § 1.179-5(c) to incorporate the guidance set forth under this section 7. Until § 1.179-5(c) is amended, taxpayers may rely on the guidance set forth in this section 7.

SECTION 8. EFFECT ON OTHER DOCUMENTS

.01 Section 3.20 of Rev. Proc. 2007-66 is modified and superseded.

.02 Section 4.01(4)(b) of Notice 2007-36, 2007-17 C.B. 1000, is clarified, modified, and amplified as provided in section 6.01(2)(b)(i) of this notice.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for (1) § 179 property placed in service by the taxpayer in its taxable year beginning in 2007 or 2008, and (2) property eligible for the Stimulus additional first year depreciation deduction that is acquired by the taxpayer after 2007 and placed in service by the taxpayer before 2009 (before 2010 in the case of property described in § 168(k)(2)(B) or (C)).

SECTION 10. DRAFTING INFORMATION

The principal authors of this revenue procedure are Winston H. Douglas and Douglas Kim of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding the Stimulus, GO Zone, or Kansas additional first year depreciation deduction, contact Mr. Kim at (202) 622-4930 (not a toll-free call). For further information regarding § 179, contact Mr. Douglas at (202) 622-4930 (not a toll-

free call).