

Internal Revenue Code Section 179(b)(5)(B)(i)(III)

Election to expense certain depreciable business assets.

(a) Treatment as expenses. A taxpayer may elect to treat the cost of any section 179 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the section 179 property is placed in service.

(b) Limitations.

(1) Dollar limitation. The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed—

(A) \$ 250,000 in the case of taxable years beginning after 2007 and before 2010,

(B) \$ 500,000 in the case of taxable years beginning in 2010 or 2011,

(C) \$ 125,000 in the case of taxable years beginning in 2012, and

(D) \$ 25,000 in the case of taxable years beginning after 2012.

(2) Reduction in limitation. The limitation under paragraph (1) for any taxable year shall be reduced (but not below zero) by the amount by which the cost of section 179 property placed in service during such taxable year exceeds—

(A) \$ 800,000 in the case of taxable years beginning after 2007 and before 2010,

(B) \$ 2,000,000 in the case of taxable years beginning in 2010 or 2011,

(C) \$ 500,000 in the case of taxable years beginning in 2012, and

(D) \$ 200,000 in the case of taxable years beginning after 2012.

(3) Limitation based on income from trade or business.

(A) In general. The amount allowed as a deduction under subsection (a) for any taxable year (determined after the application of paragraphs (1) and (2)) shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

(B) Carryover of disallowed deduction. The amount allowable as a deduction under subsection (a) for any taxable year shall be increased by the lesser of

(i) the aggregate amount disallowed under subparagraph (A) for all prior taxable years (to the extent not previously allowed as a deduction by reason of this subparagraph), or

(ii) the excess (if any) of—

(I) the limitation of paragraphs (1) and (2) (or if lesser, the aggregate amount of taxable income referred to in subparagraph (A)), over

(II) the amount allowable as a deduction under subsection (a) for such taxable year without regard to this subparagraph.

(C) Computation of taxable income. For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the deduction allowable under this section.

(4) Married individuals filing separately. In the case of a husband and wife filing separate returns for the taxable year—

(A) such individuals shall be treated as 1 taxpayer for purposes of paragraphs (1) and (2), and

(B) unless such individuals elect otherwise, 50 percent of the cost which may be taken into account under subsection (a) for such taxable year (before application of paragraph (3)) shall be allocated to each such individual.

(5) Limitation on cost taken into account for certain passenger vehicles.

(A) In general. The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed \$ 25,000.

(B) Sport utility vehicle. For purposes of subparagraph (A)—

(i) In general. The term "sport utility vehicle" means any 4-wheeled vehicle—

(I) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails),

(II) which is not subject to section 280F, and

(III) which is rated at not more than 14,000 pounds gross vehicle weight.

(ii) Certain vehicles excluded. Such term does not include any vehicle which—

(I) is designed to have a seating capacity of more than 9 persons behind the driver's seat,

(II) is equipped with a cargo area of at least 6 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or

(III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

(6) Inflation adjustment.

(A) In general. In the case of any taxable year beginning in calendar year 2012, the \$ 125,000 and \$ 500,000 amounts in paragraphs (1)(C) and (2)(C) shall each 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, by substituting "calendar year 2006" for "calendar year 1992" in subparagraph (B) thereof.

(B) Rounding.

(i) Dollar limitation. If the amount in paragraph (1) as increased under subparagraph (A) is not a multiple of \$ 1,000, such amount shall be rounded to the nearest multiple of \$ 1,000.

(ii) Phaseout amount. If the amount in paragraph (2) as increased under subparagraph (A) is not a multiple of \$ 10,000, such amount shall be rounded to the nearest multiple of \$ 10,000.

(c) Election.

(1) In general. An election under this section for any taxable year shall—

(A) specify the items of section 179 property to which the election applies and the portion of the cost of each of such items which is to be taken into account under subsection (a), and

(B) be made on the taxpayer's return of the tax imposed by this chapter for the taxable year.

Such election shall be made in such manner as the Secretary may by regulations prescribe.

(2) Election irrevocable. Any election made under this section, and any specification contained in any such election, may not be revoked except with the consent of the Secretary. Any such election or specification with respect to any taxable year beginning after 2002 and before 2013 may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.

(d) Definitions and special rules.

(1) Section 179 property. For purposes of this section, the term "section 179 property" means property—

(A) which is—

(i) tangible property (to which section 168 applies), or

(ii) computer software (as defined in section 197(e)(3)(B)) which is described in section 197(e)(3)(A)(i), to which section 167 applies, and which is placed in service in a taxable year beginning after 2002 and before 2013,

(B) which is section 1245 property (as defined in section 1245(a)(3)), and

(C) which is acquired by purchase for use in the active conduct of a trade or business.

Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.

(2) Purchase defined. For purposes of paragraph (1), the term "purchase" means any acquisition of property, but only if—

(A) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants),

(B) the property is not acquired by one component member of a controlled group from another component member of the same controlled group, and

(C) the basis of the property in the hands of the person acquiring it is not determined—

(i) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(ii) under section 1014(a) (relating to property acquired from a decedent).

(3) Cost. For purposes of this section, the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

(4) Section not to apply to estates and trusts. This section shall not apply to estates and trusts.

(5) Section not to apply to certain non-corporate lessors. This section shall not apply to any section 179 property which is purchased by a person who is not a corporation and with respect to which such person is the lessor unless—

(A) the property subject to the lease has been manufactured or produced by the lessor, or

(B) the term of the lease (taking into account options to renew) is less than 50 percent of the class life of the property (as defined in section 168(i)(1)), and for the period consisting of the first 12 months after the date on which the property is transferred to the lessee the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) exceeds 15 percent of the rental income produced by such property.

(6) Dollar limitation of controlled group. For purposes of subsection (b) of this section—

(A) all component members of a controlled group shall be treated as one taxpayer, and

(B) the Secretary shall apportion the dollar limitation contained in subsection (b)(1) among the component members of such controlled group in such manner as he shall by regulations prescribe.

(7) Controlled group defined. For purposes of paragraphs (2) and (6), the term "controlled group" has the meaning assigned to it by section 1563(a), except that, for such purposes, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1563(a)(1).

(8) Treatment of partnerships and S corporations. In the case of a partnership, the limitations of subsection (b) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(9) Coordination with section 38. No credit shall be allowed under section 38 with respect to any amount for which a deduction is allowed under subsection (a).

(10) Recapture in certain cases. The Secretary shall, by regulations, provide for recapturing the benefit under any deduction allowable under subsection (a) with respect to any property which is not used predominantly in a trade or business at any time.

(e) Special rules for qualified disaster assistance property.

(1) In general. For purposes of this section—

(A) the dollar amount in effect under subsection (b)(1) for the taxable year shall be increased by the lesser of—

(i) \$ 100,000, or

(ii) the cost of qualified section 179 disaster assistance property placed in service during the taxable year, and

(B) the dollar amount in effect under subsection (b)(2) for the taxable year shall be increased by the lesser of—

(i) \$ 600,000, or

(ii) the cost of qualified section 179 disaster assistance property placed in service during the taxable year.

(2) Qualified section 179 disaster assistance property. For purposes of this subsection, the term "qualified section 179 disaster assistance property" means section 179 property (as defined in subsection (d)) which is qualified disaster assistance property (as defined in section 168(n)(2)).

(3) Coordination with empowerment zones and renewal communities. For purposes of sections 1397A and 1400J, qualified section 179 disaster assistance property shall not be treated as qualified zone property or qualified renewal property, unless the taxpayer elects not to take such qualified section 179 disaster assistance property into account for purposes of this subsection.

(4) Recapture. For purposes of this subsection, rules similar to the rules under subsection (d)(10) shall apply with respect to any qualified section 179 disaster assistance property which ceases to be qualified section 179 disaster assistance property.

(f) Special rules for qualified real property.

(1) In general. If a taxpayer elects the application of this subsection for any taxable year beginning in 2010 or 2011, the term "section 179 property" shall include any qualified real property which is—

(A) of a character subject to an allowance for depreciation,

(B) acquired by purchase for use in the active conduct of a trade or business, and

(C) not described in the last sentence of subsection (d)(1).

(2) Qualified real property. For purposes of this subsection, the term "qualified real property" means—

(A) qualified leasehold improvement property described in section 168(e)(6),

(B) qualified restaurant property described in section 168(e)(7), and

(C) qualified retail improvement property described in section 168(e)(8).

(3) Limitation. For purposes of applying the limitation under subsection (b)(1)(B), not more than \$ 250,000 of the aggregate cost which is taken into account under subsection (a) for any taxable year may be attributable to qualified real property.

(4) Carryover limitation.

(A) In general. Notwithstanding subsection (b)(3)(B), no amount attributable to qualified real property may be carried over to a taxable year beginning after 2011.

(B) Treatment of disallowed amounts. Except as provided in subparagraph (C), to the extent that any amount is not allowed to be carried over to a taxable year beginning after 2011 by reason of subparagraph (A), this title shall be applied as if no election under this section had been made with respect to such amount.

(C) Amounts carried over from 2010. If subparagraph (B) applies to any amount (or portion of an amount) which is carried over from a taxable year other than the taxpayer's last taxable year beginning in 2011, such amount (or portion of an amount) shall be treated for purposes of this title as attributable to property placed in service on the first day of the taxpayer's last taxable year beginning in 2011.

(D) Allocation of amounts. For purposes of applying this paragraph and subsection (b)(3)(B) to any taxable year, the amount which is disallowed under subsection (b)(3)(A) for such taxable year which is attributed to qualified real property shall be the amount which bears the same ratio to the total amount so disallowed as—

(i) the aggregate amount attributable to qualified real property placed in service during such taxable year, increased by the portion of any amount carried over to such taxable year from a prior taxable year which is attributable to such property, bears to

(ii) the total amount of section 179 property placed in service during such taxable year, increased by the aggregate amount carried over to such taxable year from any prior taxable year.

For purposes of the preceding sentence, only section 179 property with respect to which an election was made under subsection (c)(1) (determined without regard to subparagraph (B) of this paragraph) shall be taken into account.