

## Internal Revenue Code Section 179(d)(5)(B)

Election to expense certain depreciable business assets.

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(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 2011,

(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.

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