

## **Internal Revenue Code Section 280F(d)(4)(A)(ii)**

Limitation on depreciation for luxury automobiles; limitation where certain property used for personal purposes.

(d) Definitions and special rules. For purposes of this section—

(1) Coordination with section 179. Any deduction allowable under section 179 with respect to any listed property shall be subject to the limitations of subsections (a) and (b), and the limitation of paragraph (3) of this subsection, in the same manner as if it were a depreciation deduction allowable under section 168.

(2) Subsequent depreciation deductions reduced for deductions allocable to personal use. Solely for purposes of determining the amount of the depreciation deduction for subsequent taxable years, if less than 100 percent of the use of any listed property during any taxable year is use in a trade or business (including the holding for the production of income), all of the use of such property during such taxable year shall be treated as use so described.

(3) Deductions of employee.

(A) In general. Any employee use of listed property shall not be treated as use in a trade or business for purposes of determining the amount of any depreciation deduction allowable to the employee (or the amount of any deduction allowable to the employee for rentals or other payments under a lease of listed property) unless such use is for the convenience of the employer and required as a condition of employment.

(B) Employee use. For purposes of subparagraph (A), the term "employee use" means any use in connection with the performance of services as an employee.

(4) Listed property.

(A) In general. Except as provided in subparagraph (B), the term "listed property" means—

(i) any passenger automobile,



(ii) any other property used as a means of transportation,

(iii) any property of a type generally used for purposes of entertainment, recreation, or amusement,

(iv) any computer or peripheral equipment (as defined in section 168(i)(2)(B)),

(v) any cellular telephone (or other similar telecommunications equipment), and

(vi) any other property of a type specified by the Secretary by regulations.

(B) Exception for certain computers. The term "listed property" shall not include any computer or peripheral equipment (as so defined) used exclusively at a regular business establishment and owned or leased by the person operating such establishment. For purposes of the preceding sentence, any portion of a dwelling unit shall be treated as a regular business establishment if (and only if) the requirements of section 280A(c)(1) are met with respect to such portion.

(C) Exception for property used in business of transporting persons or property. Except to the extent provided in regulations, clause (ii) of subparagraph (A) shall not apply to any property substantially all of the use of which is in a trade or business of providing to unrelated persons services consisting of the transportation of persons or property for compensation or hire.

(5) Passenger automobile.

(A) In general. Except as provided in subparagraph (B), the term "passenger automobile" means any 4-wheeled vehicle—

(i) which is manufactured primarily for use on public streets, roads, and highways, and

(ii) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

In the case of a truck or van, clause (ii) shall be applied by substituting "gross vehicle weight" for "unloaded gross vehicle weight".

(B) Exception for certain vehicles. The term "passenger automobile" shall not include—

(i) any ambulance, hearse, or combination ambulance-hearse used by the taxpayer directly in a trade or business,

(ii) any vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire, and

(iii) under regulations, any truck or van.

(6) Business use percentage.

(A) In general. The term "business use percentage" means the percentage of the use of any listed property during any taxable year which is a qualified business use.

(B) Qualified business use. Except as provided in subparagraph (C), the term "qualified business use" means any use in a trade or business of the taxpayer.

(C) Exception for certain use by 5-percent owners and related persons.

(i) In general. The term "qualified business use" shall not include—

(I) leasing property to any 5-percent owner or related person,

(II) use of property provided as compensation for the performance of services by a 5-percent owner or related person, or

(III) use of property provided as compensation for the performance of services by any person not described in subclause (II) unless an amount is included in the gross income of such person with respect to such use, and, where required, there was withholding under chapter 24.

(ii) Special rule for aircraft. Clause (i) shall not apply with respect to any aircraft if at least 25 percent of the total use of the aircraft during the taxable year consists of qualified business use not described in clause (i).

(D) Definitions. For purposes of this paragraph—

(i) 5-percent owner. The term "5-percent owner" means any person who is a 5-percent owner with respect to the taxpayer (as defined in section 416(i)(1)(B)(i)).

(ii) Related person. The term "related person" means any person related to the taxpayer (within the meaning of section 267(b)).

(7) Automobile price inflation adjustment.

(A) In general. In the case of any passenger automobile placed in service after 1988, subsection (a) shall be applied by increasing each dollar amount contained in such subsection by the automobile price inflation adjustment for the calendar year in which such automobile is placed in service. Any increase under the preceding sentence shall be rounded to the nearest multiple of \$ 100 (or if the increase is a multiple of \$ 50, such increase shall be increased to the next higher multiple of \$ 100).

(B) Automobile price inflation adjustment. For purposes of this paragraph—

(i) In general. The automobile price inflation adjustment for any calendar year is the percentage (if any) by which—

(I) the CPI automobile component for October of the preceding calendar year, exceeds

(II) the CPI automobile component for October of 1987.

(ii) CPI automobile component. The term "CPI automobile component" means the automobile component of the Consumer Price Index for All Urban Consumers published by the Department of Labor.

- (8) Unrecovered basis. For purposes of subsection (a)(2), the term "unrecovered basis" means the adjusted basis of the passenger automobile determined after the application of subsection (a) and as if all use during the recovery period were use in a trade or business (including the holding of property for the production of income).
- (9) All taxpayers holding interests in passenger automobile treated as 1 taxpayer. All taxpayers holding interests in any passenger automobile shall be treated as 1 taxpayer for purposes of applying subsection (a) to such automobile, and the limitations of subsection (a) shall be allocated among such taxpayers in proportion to their interests in such automobile.
- (10) Special rule for property acquired in nonrecognition transactions. For purposes of subsection (a)(2), any property acquired in a nonrecognition transaction shall be treated as a single property originally placed in service in the taxable year in which it was placed in service after being so acquired.