

Internal Revenue Code Section 280F(d)(6)(B)

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

(a) Limitation on amount of depreciation for luxury automobiles.

(1) Depreciation.

(A) Limitation. The amount of the depreciation deduction for any taxable year for any passenger automobile shall not exceed—

(i) \$ 2,560 for the 1st taxable year in the recovery period,

(ii) \$ 4,100 for the 2nd taxable year in the recovery period,

(iii) \$ 2,450 for the 3rd taxable year in the recovery period, and

(iv) \$ 1,475 for each succeeding taxable year in the recovery period.

(B) Disallowed deductions allowed for years after recovery period.

(i) In general. Except as provided in clause (ii), the unrecovered basis of any passenger automobile shall be treated as an expense for the 1st taxable year after the recovery period. Any excess of the unrecovered basis over the limitation of clause (ii) shall be treated as an expense in the succeeding taxable year.

(ii) \$ 1,475 limitation. The amount treated as an expense under clause (i) for any taxable year shall not exceed \$ 1,475.

(iii) Property must be depreciable. No amount shall be allowable as a deduction by reason of this subparagraph with respect to any property for any taxable year unless a depreciation deduction would be allowable with respect to such property for such taxable year.

(iv) Amount treated as depreciation deduction. For purposes of this subtitle, any amount allowable as a deduction by reason of this subparagraph shall be treated as a depreciation deduction allowable under section 168.

(C) Special rule for certain clean-fuel passenger automobiles.

(i) Modified automobiles. In the case of a passenger automobile which is propelled by a fuel which is not a clean-burning fuel and to which is installed qualified

clean-fuel vehicle property (as defined in section 179A(c)(1)(A)) for purposes of permitting such vehicle to be propelled by a clean burning fuel (as defined in section 179A(e)(1)), subparagraph (A) shall not apply to the cost of the installed qualified clean burning vehicle property.

(ii) Purpose built passenger vehicles. In the case of a purpose built passenger vehicle (as defined in section 4001(a)(2)(C)(ii)), each of the annual limitations specified in subparagraphs (A) and (B) shall be tripled.

(iii) Application of subparagraph. This subparagraph shall apply to property placed in service after August 5, 1997, and before January 1, 2007.

(2) Coordination with reductions in amount allowable by reason of personal use, etc. This subsection shall be applied before—

(A) the application of subsection (b), and

(B) the application of any other reduction in the amount of any depreciation deduction allowable under section 168 by reason of any use not qualifying the property for such credit or depreciation deduction.

(b) Limitation where business use of listed property not greater than 50 percent.

(1) Depreciation. If any listed property is not predominantly used in a qualified business use for any taxable year, the deduction allowed under section 168 with respect to such property for such taxable year and any subsequent taxable year shall be determined under section 168(g) (relating to alternative depreciation system).

(2) Recapture.

(A) Where business use percentage does not exceed 50 percent. If—

(i) property is predominantly used in a qualified business use in a taxable year in which it is placed in service, and

(ii) such property is not predominantly used in a qualified business use for any subsequent taxable year,

then any excess depreciation shall be included in gross income for the taxable year referred to in clause (ii), and the depreciation deduction for the taxable year referred to in clause (ii) and any subsequent taxable years shall be determined under section 168(g) (relating to alternative depreciation system).

(B) Excess depreciation. For purposes of subparagraph (A), the term "excess depreciation" means the excess (if any) of—

(i) the amount of the depreciation deductions allowable with respect to the property for taxable years before the 1st taxable year in which the property was not predominantly used in a qualified business use, over

(ii) the amount which would have been so allowable if the property had not been predominantly used in a qualified business use for the taxable year in which it was placed in service.

(3) Property predominantly used in qualified business use. For purposes of this subsection, property shall be treated as predominantly used in a qualified business use for any taxable year if the business use percentage for such taxable year exceeds 50 percent.

(c) Treatment of leases.

(1) Lessor's deductions not affected. This section shall not apply to any listed property leased or held for leasing by any person regularly engaged in the business of leasing such property.

(2) Lessee's deductions reduced. For purposes of determining the amount allowable as a deduction under this chapter for rentals or other payments under a lease for a period of 30 days or more of listed property, only the allowable percentage of such payments shall be taken into account.

(3) Allowable percentage. For purposes of paragraph (2), the allowable percentage shall be determined under tables prescribed by the Secretary. Such tables shall be prescribed so that the reduction in the deduction under paragraph (2) is substantially equivalent to the applicable restrictions contained in subsections (a) and (b).

(4) Lease term. In determining the term of any lease for purposes of paragraph (2), the rules of section 168(i)(3)(A) shall apply.

(5) Lessee recapture. Under regulations prescribed by the Secretary, rules similar to the rules of subsection (b)(3) shall apply to any lessee to which paragraph (2) applies.

(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)), and

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

(vi) [Redesignated]

(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.

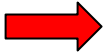
In the case of a truck or van, clause (ii) shall be applied by substituting "gross vehicle weight" for "unloaded gross vehicle weight".

(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.

(e) Regulations. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations with respect to items properly included in, or excluded from, the adjusted basis of any listed property.