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### **Reg. Section 1.179-1(e)(3)**

Election to expense certain depreciable assets.

(e) Change in use; recapture

- (1) In general. If a taxpayer's section 179 property is not used predominantly in a trade or business of the taxpayer at any time before the end of the property's recovery period, the taxpayer must recapture in the taxable year in which the section 179 property is not used predominantly in a trade or business any benefit derived from expensing such property. \*  
\* \* The benefit derived from expensing the property is equal to the excess of the amount expensed under this section over the total amount that would have been allowable for prior taxable years and the taxable year of recapture as a deduction under section 168 (had section 179 not been elected) for the portion of the cost of the property to which the expensing relates (regardless of whether such excess reduced the taxpayer's tax liability). For purposes of the preceding sentence (i) the "amount expensed under this section" shall not include any amount that was not allowed as a deduction to a taxpayer because the taxpayer's aggregate amount of allowable section 179 expenses exceeded the section 179(b) dollar limitation, and (ii) in the case of an individual who does not elect to itemize deductions under section 63(g) in the taxable year of recapture, the amount allowable as a deduction under section 168 in the taxable year of recapture shall be determined by treating property used in the production of income other than rents or royalties as being property used for personal purposes. The amount to be recaptured shall be treated as ordinary income for the taxable year in which the property is no longer used predominantly in a trade or business of the taxpayer. For taxable years following the year of recapture, the taxpayer's deductions under section 1688(a) shall be determined as if no section 179 election with respect to the property had been made. However, see section 280F(d)(1) relating to the coordination of section 179 with the limitation on the amount of depreciation for luxury automobiles and where certain property is used for personal purposes. If the recapture rules of both section 280F(b)(2) and this paragraph (e)(1) apply to an item of section 179 property, the amount of recapture for such property shall be determined only under the rules of section 280F(b)(2).
  
- (2) Predominant use. Property will be treated as not used predominantly in a trade or business of the taxpayer if 50 percent or more of the use of such property during any taxable year within the recapture period is for a use other than in a trade or business of the taxpayer. If during any taxable year of the recapture period the taxpayer disposes of the property (other than in a disposition to which section 1245(a) applies) or ceases to use the property in a trade or business in a manner that had the taxpayer claimed a credit under section 38 for such property such disposition or cessation in use would cause recapture under section 47, the property will be treated as not used in a trade or business of the taxpayer. However, for purposes of applying the recapture rules of section 47 pursuant to the preceding sentence, converting the use of the property from use in trade or

business to use in the production of income will be treated as a conversion to personal use.



- (3) Basis; application with section 1245. The basis of property with respect to which there is recapture under paragraph (e)(1) of this section shall be increased immediately before the event resulting in such recapture by the amount recaptured. If section 1245(a) applies to a disposition of property, there is no recapture under paragraph (e)(1) of this section.
- (4) Carryover of disallowed deduction. See § 1.179-3 for rules on applying the recapture provisions of this paragraph (e) when a taxpayer has a carryover of disallowed deduction.
- (5) Example. The following example illustrates the provisions of paragraphs (e)(1) through (e)(4) of this section.

Example. A, a calendar-year taxpayer, purchases and places in service on January 1, 1991, section 179 property costing \$15,000. The property is 5-year property for section 168 purposes and is the only item of depreciable property placed in service by A during 1991. A properly elects to expense \$10,000 of the cost and elects under section 168(b)(5) to depreciate the remaining cost under the straight-line method. On January 1, 1992, A converts the property from use in A's business to use for the production of income, and A uses the property in the latter capacity for the entire year. A elects to itemize deductions for 1992. Because the property was not predominantly used in A's trade or business in 1992, A must recapture any benefit derived from expensing the property under section 179. Had A not elected to expense the \$10,000 in 1991, A would have been entitled to deduct, under section 168, 10 percent of the \$10,000 in 1991, and 20 percent of the \$10,000 in 1992. Therefore, A must include \$7,000 in ordinary income for the 1992 taxable year, the excess of \$10,000 (the section 179 expense amount) over \$3,000 (30 percent of \$10,000).

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