

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, §§ 56, 168, 179, 446, 1400L.)

Rev. Proc. 2002-33

SECTION 1. PURPOSE

This revenue procedure provides procedures for a taxpayer to claim the additional 30 percent depreciation (additional first year depreciation) provided by §§ 168(k) and 1400L(b) of the Internal Revenue Code and other deductions for qualified property or qualified New York Liberty Zone (Liberty Zone) property that the taxpayer did not claim on the taxpayer's federal tax return filed before June 1, 2002.

This revenue procedure also explains how a taxpayer may elect not to deduct the additional first year depreciation for qualified property and Liberty Zone property.

SECTION 2. BACKGROUND

.01 Section 168(k), as added by § 101 of the Job Creation and Worker Assistance Act of 2002 (the Act), Pub. L. No. 107-147, 116 Stat. 21 (March 9, 2002), and § 1400L(b), as added by § 301(a) of the Act, generally allow an additional first year

depreciation deduction for qualified property or Liberty Zone property placed in service by the taxpayer after September 10, 2001. The term “qualified property” is defined in § 168(k)(2) and the term “Liberty Zone property” is defined in § 1400L(b)(2). The additional first year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the qualified property or Liberty Zone property is placed in service. If the property is described in both § 168(k) and § 1400L(b), only one additional first year depreciation deduction is allowable for the property.

.02 The additional first year depreciation deduction generally is determined without any proration based on the length of the taxable year in which the qualified property or Liberty Zone property is placed in service. The additional first year depreciation is equal to 30 percent of the adjusted basis of the qualified property or Liberty Zone property. The adjusted basis of this property generally is its cost or other basis multiplied by the percentage of business/investment use, reduced by the amount of any § 179 expense deduction and adjusted to the extent provided by other provisions of the Code and the regulations thereunder (for example, reduced by the amount of the disabled access credit pursuant to § 44(d)(7)).

.03 Before computing the amount otherwise allowable as a depreciation deduction for the placed-in-service year and subsequent taxable years, the adjusted basis of the qualified property or Liberty Zone property for which the additional first year depreciation is deductible must be reduced by the amount of the additional first year depreciation deduction. The remaining adjusted basis of this property is depreciated using the applicable depreciation provisions under the Code for the property (that is,

§ 167(f)(1) for computer software and § 168 for other property). This depreciation deduction for the remaining adjusted basis of the qualified property or Liberty Zone property for which the additional first year depreciation is deductible is allowed for both regular tax and alternative minimum tax purposes.

.04 The additional first year depreciation must not be deducted for, among other things: (1) property that is required to be depreciated under the alternative depreciation system of § 168(g) pursuant to § 168(g)(1)(A) through (D) or other provisions of the Code (for example, property described in § 263A(e)(2)(A) or § 280F(b)(1)); (2) property described in § 168(f); or (3) any class of property for which the taxpayer elects not to deduct the additional first year depreciation (see section 3 of this revenue procedure for further details about this election).

.05 Pursuant to §§ 168(k)(2)(C)(ii) and 1400L(b)(2)(C)(iii), Liberty Zone leasehold improvement property (as defined in § 1400L(c)(2)) is not eligible for the additional first year depreciation deduction. However, in accordance with § 1400L(c), this property is included as 5-year property for purposes of § 168. The straight-line method of depreciation is required to be used under § 168 for Liberty Zone leasehold improvement property and the class life for this property for purposes of the alternative depreciation system of § 168(g) is 9 years.

.06 For § 179 property that is Liberty Zone property, § 1400L(f) increased the amount a taxpayer may elect to expense under § 179 by the lesser of (1) \$35,000, or (2) the cost of § 179 property that is Liberty Zone property placed in service during the taxable year. Accordingly, the § 179 expense deduction that may be elected for § 179 property that is Liberty Zone property placed in service by the taxpayer after September

10, 2001, is increased (1) to a maximum of \$55,000 for a taxable year that began in 2000, and (2) to a maximum of \$59,000 for a taxable year that began in 2001.

SECTION 3. ELECTION NOT TO DEDUCT ADDITIONAL FIRST YEAR DEPRECIATION

.01 In General. Pursuant to §§ 168(k)(2)(C)(iii) and 1400L(b)(2)(C)(iv), a taxpayer may make an election not to deduct the additional first year depreciation for any class of property placed in service during the taxable year. If the taxpayer makes this election, it applies to all qualified property or Liberty Zone property that is in the same class and placed in service in the same taxable year. In addition, the depreciation adjustments under § 56 apply to that property for purposes of computing the taxpayer's alternative minimum taxable income. The election not to deduct the additional first year depreciation for any class of property placed in service during the taxable year is made separately by each person owning qualified property or Liberty Zone property (for example, by each member of a consolidated group, by the partnership, or by the S corporation).

.02 Definition of Class of Property.

(1) For purposes of the election under § 168(k)(2)(C)(iii) not to deduct the additional first year depreciation for qualified property, the term "class of property" means: (a) except for the property described in this section 3.02(1)(b) and (d), each class of property described in § 168(e) (for example, 5-year property); (b) water utility property as defined in § 168(e)(5) and depreciated under § 168; (c) computer software depreciated under § 167(f)(1); or (d) qualified leasehold improvement property as defined in § 168(k)(3) and depreciated under § 168.

(2) For purposes of the election under § 1400L(b)(2)(C)(iv) not to deduct the additional first year depreciation for Liberty Zone property, the term “class of property” means: (a) except for the property described in this section 3.02(2)(b), (d), and (e), each class of property described in § 168(e) (for example, 5-year property); (b) water utility property as defined in § 168(e)(5) and depreciated under § 168; (c) computer software depreciated under § 167(f)(1); (d) nonresidential real property described in § 1400L(b)(2)(B) and depreciated under § 168; or (e) residential rental property described in § 1400L(b)(2)(B) and depreciated under § 168.

.03 Time and Manner of Making the Election.

(1) In general. An election not to deduct the additional first year depreciation for any class of property that is qualified property or Liberty Zone property placed in service during the taxable year must be made by the due date (including extensions) of the federal tax return for the taxable year in which the qualified property or Liberty Zone property is placed in service by the taxpayer. The election must be made in the manner prescribed on Form 4562, Depreciation and Amortization, and its instructions. However, see section 3.03(3) of this revenue procedure for the procedures for making the election not to deduct the additional first year depreciation for any class of property placed in service by the taxpayer after September 10, 2001, during the taxable year beginning in 2000 or 2001 (2000 or 2001 taxable year).

(2) Limited relief for late election.

(a) Automatic 6-month extension. Pursuant to § 301.9100-2(b) of the Procedure and Administration Regulations, an automatic extension of 6 months from the due date of the federal tax return (excluding extensions) for the

placed-in-service year of the qualified property or Liberty Zone property is granted to make the election not to deduct the additional first year depreciation, provided the taxpayer timely filed the taxpayer's federal tax return for the placed-in-service year and the taxpayer satisfies the requirements in § 301.9100-2(c) and § 301.9100-2(d).

(b) Other extensions. A taxpayer that fails to make the election not to deduct the additional first year depreciation for the placed-in-service year for the qualified property or Liberty Zone property as provided in section 3.03(1), 3.03(2)(a), 3.03(3), or 4.02 of this revenue procedure but wants to do so must file a request for an extension of time to make the election under the rules in § 301.9100-3.

(3) Special rules for 2000 or 2001 return.

(a) Return filed on or after June 1, 2002. If a taxpayer files the 2000 or 2001 federal tax return on or after June 1, 2002, the procedures in section 3.03(1) of this revenue procedure apply for making the election not to deduct the additional first year depreciation for any class of property that is qualified property or Liberty Zone property placed in service by the taxpayer after September 10, 2001, during the 2000 or 2001 taxable year. However, the taxpayer must follow the instructions for the 2001 Form 4562 (Rev. March 2002). These instructions require the taxpayer to attach to the federal tax return a statement indicating the class of property for which the taxpayer is electing not to deduct the additional first year depreciation.

(b) Return filed before June 1, 2002. If a taxpayer has filed the 2000 or 2001 federal tax return before June 1, 2002, see section 4.02 of this revenue procedure for the procedures for making the election not to deduct the additional first year depreciation for any class of property that is qualified property or Liberty Zone

property placed in service by the taxpayer after September 10, 2001, during the 2000 or 2001 taxable year.

.04 Revocation. An election not to deduct the additional first year depreciation for a class of property that is qualified property or Liberty Zone property placed in service during the taxable year is revocable only with the prior written consent of the Commissioner of Internal Revenue. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling in accordance with the provisions of Rev. Proc. 2002-1, 2002-1 I.R.B. 1 (or any successor).

.05 Failure to make election not to deduct additional first year depreciation. If a taxpayer does not make the election not to deduct the additional first year depreciation for a class of property that is qualified property or Liberty Zone property within the time and in the manner prescribed in section 3.03 or 4.02 of this revenue procedure, the amount of depreciation allowable for that property under § 167(f)(1) or under § 168, as applicable, must be determined for the placed-in-service year and for all subsequent years by taking into account the additional first year depreciation deduction. Thus, the election not to deduct the additional first year depreciation cannot be made by the taxpayer in any other manner (for example, through a request under § 446(e) to change the taxpayer's method of accounting).

SECTION 4. PROCEDURES FOR RETURNS FILED BEFORE JUNE 1, 2002

.01 Additional First Year Depreciation. If a taxpayer has filed a 2000 or 2001 federal tax return before June 1, 2002, and did not claim on that return the additional first year depreciation for a class of property that is qualified property or Liberty Zone property placed in service by the taxpayer after September 10, 2001, during the 2000 or

2001 taxable year but wants to do so, the taxpayer may claim the additional first year depreciation for that class of property under this section 4.01, provided the taxpayer did not make an election not to deduct the additional first year depreciation for the class of property pursuant to section 4.02(1) or (2) of this revenue procedure. The taxpayer has the option of claiming this additional first year depreciation either by:

(1) filing an amended federal tax return (or a qualified amended return under Rev. Proc. 94-69, 1994-2 C.B. 804, if applicable) on or before the due date (excluding extensions) of the federal tax return for the next succeeding taxable year.

The amended return (or qualified amended return) should include the statement “Filed Pursuant to Rev. Proc. 2002-33” at the top of the amended return (or qualified amended return); or

(2) filing a Form 3115, Application for Change in Accounting Method, with the taxpayer’s federal tax return for the next succeeding taxable year. This Form 3115 is to be filed in accordance with the automatic change in method of accounting provisions in Rev. Proc. 2002-9, 2002-3 I.R.B. 327, as modified by Rev. Proc. 2002-19, 2002-13 I.R.B. 696, and as modified and clarified by Announcement 2002-17, 2002-8 I.R.B. 561, (or any successor) with the following modifications:

(a) The scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply, and

(b) To assist the Service in processing changes in method of accounting under this section of the revenue procedure, and to ensure proper handling, section 6.02(4)(a) of Rev. Proc. 2002-9 is modified to require that a Form 3115 filed under this revenue procedure include the statement: “Automatic Change Filed Under

Rev. Proc. 2002-33.” This statement should be legibly printed or typed on the appropriate line on any Form 3115 filed under this revenue procedure.

.02 Election Not to Deduct Additional First Year Depreciation.

(1) In general. A taxpayer that has filed a 2000 or 2001 federal tax return before June 1, 2002, has made the election not to deduct the additional first year depreciation for a class of property that is qualified property or Liberty Zone property placed in service by the taxpayer after September 10, 2001, during the 2000 or 2001 taxable year, if:

(a) the taxpayer made the election within the time prescribed in section 3.03(1) or 3.03(2)(a) of this revenue procedure and in the manner prescribed in the instructions for the 2001 Form 4562 (Rev. March 2002); or

(b) the taxpayer made the election within the time prescribed in section 3.03(1) or 3.03(2)(a) of this revenue procedure and included with the taxpayer's 2000 or 2001 federal tax return an affirmative statement to the effect that the taxpayer is not deducting the additional first year depreciation for the class of property. The affirmative statement may be a statement attached to, or written on, the return (for example, writing on the Form 4562 “not deducting 30 percent”).

(2) Deemed election. If section 4.02(1) of this revenue procedure does not apply, a taxpayer that has filed a 2000 or 2001 federal tax return before June 1, 2002, will also be treated as making the election not to deduct the additional first year depreciation for a class of property that is qualified property or Liberty Zone property placed in service by the taxpayer after September 10, 2001, during the 2000 or 2001 taxable year, if the taxpayer:

(a) on that return, did not claim the additional first year depreciation for that class of property but did claim depreciation; and

(b) does not file an amended federal tax return (or a qualified amended return) or a Form 3115 within the time prescribed in section 4.01 of this revenue procedure to claim the additional first year depreciation for the class of property.

.03 Increased Section 179 Expensing for Liberty Zone Property. If a taxpayer has filed a 2000 or 2001 federal tax return before June 1, 2002, and did not elect on that return to expense the increased § 179 amount for § 179 property that is Liberty Zone property placed in service by the taxpayer after September 10, 2001, during the 2000 or 2001 taxable year, the taxpayer must file an amended return (or a qualified amended return under Rev. Proc. 94-69, if applicable) on or before the due date (excluding extensions) of the federal tax return for the next succeeding taxable year to make this election. This amended return (or qualified amended return) should include the statement "Filed Pursuant to Rev. Proc. 2002-33" at the top of the amended return (or qualified amended return).

.04 Liberty Zone Leasehold Improvement Property. If a taxpayer has filed a 2000 or 2001 federal tax return before June 1, 2002, and did not depreciate on that return Liberty Zone leasehold improvement property placed in service by the taxpayer after September 10, 2001, during the 2000 or 2001 taxable year as 5-year property for purposes of § 168 using the straight-line method of depreciation, the taxpayer should file an amended tax return (or a qualified amended return under Rev. Proc. 94-69, if applicable) before the taxpayer files the federal tax return for the next succeeding

taxable year. The amended return (or qualified amended return) should include the statement "Filed Pursuant to Rev. Proc. 2002-33" at the top of the amended return (or qualified amended return).

SECTION 5. EFFECT ON OTHER DOCUMENTS

.01 Rev. Proc. 2002-9 is modified and amplified to include the accounting method change provided in section 4.01 of this revenue procedure in section 2 of the APPENDIX.

.02 Section 2.01 of the APPENDIX of Rev. Proc. 2002-9 is modified as follows:

(1) Section 2.01(2)(a)(ii) of the APPENDIX is modified to read as follows:

"(ii) for which depreciation is determined under § 56(a)(1), § 56(g)(4)(A), § 167, § 168, § 197, § 1400L(b), or § 1400L(c), or under § 168 prior to its amendment in 1986 (former § 168); and"

(2) Section 2.01(2)(c)(vi) of the APPENDIX is modified to read as follows:

"(vi) any property for which a taxpayer is revoking a timely valid election, or making a late election, under § 167, § 168, § 1400L(b), former § 168, or § 13261(g)(2) or (3) of the Revenue Reconciliation Act of 1993 (1993 Act), 1993-3 C.B. 1, 128 (relating to amortizable § 197 intangibles). A taxpayer may request consent to revoke or make the election by submitting a request for a letter ruling under Rev. Proc. 2002-1, 2002-1 I.R.B. 1 (or any successor);"

(3) Section 2.01(2)(c)(xii) of the APPENDIX is modified to read as follows:

"(xii) any change in method of accounting involving both a change from treating the cost or other basis of the property as nondepreciable property to treating the cost or other basis of the property as depreciable property and the adoption of a method of

accounting for depreciation requiring an election under § 167, §168, § 1400L(b), former § 168, or § 13261(g)(2) or (3) of the 1993 Act (for example, a change in the treatment of the space consumed in landfills placed in service in 1990 from nondepreciable to depreciable property (assuming section 2.01(2)(c)(xiii) of the APPENDIX does not apply) and the making of an election under § 168(f)(1) to depreciate this property under the unit-of-production method of depreciation under § 167);”

(4) Section 2.01(6)(d) of the APPENDIX is modified to read as follows:

“(d) Section 167 property. Generally, for any taxable year, the depreciation allowable for property for which depreciation is determined under § 167, is determined either:

(i) under the depreciation method adopted by a taxpayer for the property;

or

(ii) if that depreciation method does not result in a reasonable allowance for depreciation or a taxpayer has not adopted a depreciation method for the property, under the straight-line depreciation method.

For determining the estimated useful life and salvage value of the property, see § 1.167(a)-1(b) and (c), respectively.

The depreciation allowable for any taxable year for property subject to § 167(f) (regarding certain property excluded from § 197) is determined by using the depreciation method and useful life prescribed in § 167(f). If computer software is depreciated under § 167(f)(1) and is qualified property (as defined in § 168(k)(2)) or qualified New York Liberty Zone (Liberty Zone) property (as defined in § 1400L(b)(2)), the depreciation allowable for that computer software under § 167(f)(1) is also

determined by taking into account the additional 30 percent depreciation (additional first year depreciation) deduction provided by § 168(k) or § 1400L(b), as applicable, unless the taxpayer made a timely valid election not to deduct the additional first year depreciation for the property.”

(5) Section 2.01(6)(e) of the APPENDIX is modified to read as follows:

“(e) Section 168 property. The depreciation allowable for any taxable year for property for which depreciation is determined under § 168, is determined as follows:

(i) by using either:

(A) the general depreciation system in § 168(a); or

(B) the alternative depreciation system in § 168(g) if the property is required to be depreciated under the alternative depreciation system pursuant to § 168(g)(1) or other provisions of the Code (for example, property described in § 263A(e)(2)(A) or § 280F(b)(1)). Property required to be depreciated under the alternative depreciation system pursuant to § 168(g)(1) includes property in a class (as set out in § 168(e)) for which the taxpayer made a timely election under § 168(g)(7); and

(ii) if the property is qualified property or Liberty Zone property, by taking into account the additional first year depreciation deduction provided by § 168(k) or § 1400L(b), as applicable, unless the taxpayer made a timely valid election not to deduct the additional first year depreciation for the property.”

(6) Section 2.01(6) of the APPENDIX is modified by adding a new paragraph (h) to read as follows:

“(h) Qualified New York Liberty Zone leasehold improvement property. The

depreciation allowable for any taxable year for qualified New York Liberty Zone leasehold improvement property (as defined in § 1400L(c)(2)) is determined by using the depreciation method and recovery period prescribed in § 1400L(c).”

.03 Section 2.02(2)(c)(vi) of the APPENDIX of Rev. Proc. 2002-9 is modified as follows:

“(vi) any property for which depreciation is determined under § 56(a)(1), § 56(g)(4)(A)(i), (ii), (iii), or (v), § 168, § 1400L(b), or § 1400L(c), or under § 168 prior to its amendment in 1986 (former § 168);”

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for qualified property, Liberty Zone property, and Liberty Zone leasehold improvement property placed in service after September 10, 2001.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Douglas Kim and Kathleen Reed of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Kim at (202) 622-3110 (not a toll-free call).