

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, §§ 168, 179, 1400L; 1.179-5.)

Rev. Proc. 2003-50

SECTION 1. PURPOSE

This revenue procedure amplifies and modifies Rev. Proc. 2002-33, 2002-20 I.R.B. 963, by extending the relief provided in Rev. Proc. 2002-33 to any taxpayer that timely filed its 2000 or 2001 federal tax return for the taxable year that included September 11, 2001. This revenue procedure also permits an automatic extension of time to allow certain taxpayers to change their selection of § 179 property for the taxable year that included September 11, 2001.

SECTION 2. BACKGROUND

.01 Rev. Proc. 2002-33 provided additional time for certain taxpayers that filed their 2000 or 2001 federal tax return before June 1, 2002, to (1) claim the 30-percent additional first year depreciation provided by §§ 168(k)(1) and 1400L(b) of the Internal Revenue Code for a class of property that is qualified property or qualified New York Liberty Zone (Liberty Zone) property placed in service after September 10, 2001, during the 2000 or 2001 taxable year, (2) elect the increased § 179 amount provided by § 1400L(f) 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, and (3) depreciate under § 168 Liberty Zone leasehold improvement property (as defined in § 1400L(c)(2)) placed in service by the taxpayer after September 10, 2001, during the 2000 or 2001 taxable year, as 5-year property using the straight-line method of depreciation. See sections 4.01, 4.03, and 4.04 of Rev. Proc. 2002-33.

.02 Rev. Proc. 2002-33 also explained how taxpayers may make the election provided by § 168(k)(2)(C)(iii) and § 1400L(b)(2)(C)(iv) not to deduct the 30-percent additional first year depreciation for any class of property that is qualified property or Liberty Zone property placed in service after September 10, 2001. Special provisions, including a deemed election, were provided for taxpayers that filed their 2000 or 2001 federal tax return before June 1, 2002. See sections 3 and 4.02 of Rev. Proc. 2002-33.

.03 The Treasury Department and the Internal Revenue Service have learned that some taxpayers were unaware of the relief provided by Rev. Proc. 2002-33 or were

precluded from the relief because their federal tax returns for the taxable year that included September 11, 2001, were filed on or after June 1, 2002. As a result, Treasury and the Service have determined that it is appropriate to extend the relief provided in section 4 of Rev. Proc. 2002-33 to any taxpayer that timely filed its federal tax return for the taxable year that included September 11, 2001. Treasury and the Service also have determined that it is appropriate to allow certain taxpayers additional time to change their selection of § 179 property. Accordingly, section 3 of this revenue procedure amplifies and modifies section 4 of Rev. Proc. 2002-33.

SECTION 3. PROCEDURES FOR RETURNS TIMELY FILED FOR A TAXABLE YEAR THAT INCLUDED SEPTEMBER 11, 2001

.01 30-Percent Additional First Year Depreciation.

(1) In general. If a taxpayer timely filed its federal tax return for a taxable year that included September 11, 2001, and did not claim on that return the 30-percent 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 taxable year that included September 11, 2001, but wants to do so, the taxpayer may claim the 30-percent additional first year depreciation for that class of property under this section 3.01, provided the taxpayer did not make an election in the manner described in section 3.02(1) or (2) of this revenue procedure not to deduct the 30-percent additional first year depreciation for the class of property. The taxpayer has the option of claiming the 30-percent additional first year depreciation for the taxable year that included September 11, 2001:

(a) by filing an amended federal tax return (or a qualified amended return under Rev. Proc. 94-69, 1994-2 C.B. 804, if applicable; hereinafter, referred to in this document as a “qualified amended return”) on or before December 31, 2003, for the taxable year that included September 11, 2001, and any affected subsequent taxable year, and including the statement “Filed Pursuant to Rev. Proc. 2003-50” at the top of any amended federal tax return (or qualified amended return);

(b) by filing a Form 3115, Application for Change in Accounting Method, with the taxpayer’s timely filed federal tax return for the first taxable year succeeding the taxable year that included September 11, 2001, if this return has not been filed on or before July 21, 2003 and the taxpayer owns the property as of the first day of this taxable year; or

(c) if the taxpayer’s federal tax return for the first taxable year succeeding the taxable year that included September 11, 2001, was filed on or before July 21, 2003, by

(i) filing an amended federal tax return (or a qualified amended return) on or before December 31, 2003, for the first taxable year succeeding the taxable year that included September 11, 2001, attaching a Form 3115 to the amended federal tax return, and including the statement “Filed Pursuant to Rev. Proc. 2003-50” at the top of the amended federal tax return (or qualified amended return); or

(ii) filing a Form 3115 with the taxpayer’s timely filed federal tax return for the second taxable year succeeding the taxable year that included September

11, 2001, and ending on or before July 31, 2004, if the taxpayer owns the property as of the first day of this taxable year.

(2) Automatic change in method of accounting. The Form 3115 is to be completed and 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 and amplified by Rev. Proc. 2002-19, 2002-13 I.R.B. 696, as amplified, clarified, and modified by Rev. Proc. 2002-54, 2002-35 I.R.B. 432, 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. 2003-50." 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 30-Percent Additional First Year Depreciation.

(1) In general. A taxpayer that timely filed its federal tax return for the taxable year that included September 11, 2001, has made the election not to deduct the 30-percent additional first year depreciation for a class of property that is qualified property or Liberty Zone property during the taxable year that included September 11, 2001, if:

(a) the taxpayer made the election within the time prescribed in section 3.03(1) or 3.03(2)(a) of Rev. Proc. 2002-33, and in the manner prescribed in the instructions for the 2001 Form 4562, Depreciation and Amortization (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 Rev. Proc. 2002-33 and included with the taxpayer's federal tax return for the taxable year that included September 11, 2001, an affirmative statement to the effect that the taxpayer is not deducting the 30-percent 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 3.02(1) of this revenue procedure does not apply, a taxpayer that timely filed its federal tax return for the taxable year that included September 11, 2001, also will be treated as making the election not to deduct the 30-percent 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 taxable year that included September 11, 2001, if the taxpayer:

(a) on that return, did not claim the 30-percent 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 and in the manner prescribed in section 3.01 of this revenue procedure to claim the 30-percent additional first year depreciation for the class of property for the taxable year that included September 11, 2001.

.03 Increased Section 179 Expensing for Liberty Zone Property. If a taxpayer timely filed its federal tax return for the taxable year that included September 11, 2001, and did not elect on that return to expense the increased § 179 amount provided by § 1400L(f) for § 179 property that is Liberty Zone property placed in service by the taxpayer after September 10, 2001, during the taxable year that included September 11, 2001, but wants to do so, the taxpayer must file an amended federal tax return (or a qualified amended return) on or before December 31, 2003, for the taxable year that included September 11, 2001, and any affected subsequent taxable year, and attach to the amended federal tax return for the taxable year that included September 11, 2001, the election and any necessary information required by § 1.179-5 of the Income Tax Regulations. The taxpayer must also include the statement “Filed Pursuant to Rev. Proc. 2003-50” at the top of any amended federal tax return (or qualified amended return).

.04 Changing Selection of Section 179 Property.

(1) Application. If a taxpayer timely filed its federal tax return for the taxable year that included September 11, 2001, and, on that return, made a § 179 election for property, the taxpayer may change the selection of the § 179 property on that return if:

(a) on that return, the taxpayer did not deduct the 30-percent additional first year depreciation for any property or did not elect out of the 30-percent additional first year depreciation;

(b) the taxpayer made the § 179 election for property placed in service after September 10, 2001; and

(c) the taxpayer now wants to claim the 30-percent additional first year depreciation for that same property and apply the § 179 election to other property placed in service by the taxpayer in the taxable year that included September 11, 2001.

(2) Time and manner of changing selection. A taxpayer described in section 3.04(1) of this revenue procedure changes the selection of the § 179 property by filing an amended federal tax return (or a qualified amended return) on or before December 31, 2003, for the taxable year that included September 11, 2001, and any affected subsequent taxable year, and attaching to the amended federal tax return for the taxable year that included September 11, 2001, the election and any necessary information required by § 1.179-5. The taxpayer must also include the statement “Filed Pursuant to Rev. Proc. 2003-50” at the top of any amended federal tax return (or qualified amended return).

.05 Liberty Zone Leasehold Improvement Property. If a taxpayer timely filed its federal tax return for the taxable year that included September 11, 2001, and did not depreciate on that return Liberty Zone leasehold improvement property placed in

service by the taxpayer after September 10, 2001, during the taxable year that included September 11, 2001, as 5-year property for purposes of § 168 using the straight-line method of depreciation, the taxpayer must depreciate the Liberty Zone leasehold improvement property as 5-year property by either filing an amended federal tax return (or qualified amended return) or a Form 3115 within the time and in the manner prescribed in section 3.01 of this revenue procedure for claiming the 30-percent additional first year depreciation for a class of property for the taxable year that included September 11, 2001.

SECTION 4. EFFECT ON OTHER DOCUMENTS

.01 Rev. Proc. 2002-33 is amplified and modified.

.02 Rev. Proc. 2002-9 is amplified and modified to include the accounting method change provided in section 3.01 of this revenue procedure in section 2 of the APPENDIX.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective June 26, 2003.

DRAFTING INFORMATION

The principal author of this revenue procedure is Douglas Kim 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).