

[CC-2004-024]

July 12, 2004

Subject: Application of CC-2004-007
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This notice clarifies the application of CC-2004-007, Change in Litigating Position-- Application of Section 446(e) to Changes in Computing Depreciation, with respect to a change in computing depreciation under section 167, 168 (MACRS), 197, 1400I, 1400L(b), or 1400L(c), or former section 168 (ACRS).

On January 28, 2004, the Service issued CC-2004-007 announcing that for depreciable or amortizable property placed in service by the taxpayer in taxable years ending before December 30, 2003, the Service generally will not assert that a change in computing depreciation under section 167, 168, 197, 1400I, 1400L(b), or 1400L(c), or former section 168 for depreciable or amortizable property that is treated as a capital asset under the taxpayer's present and proposed methods of accounting is a change in method of accounting under section 446(e). CC-2004-007 also provided the changes in depreciation to which CC-2004-007 did not apply.

If CC-2004-007 applies to a change in computing depreciation, a taxpayer may take the position that the change in computing depreciation is not a change in method of accounting and, therefore, file amended federal tax returns to implement the change in computing depreciation. Alternatively, the taxpayer may treat the change in computing depreciation as a change in method of accounting and, thus, file a Form 3115, Application for Change in Accounting Method, for the current taxable year under Rev. Proc. 97-27, 1997-1 C.B. 680, or under Rev. Proc. 2002-9, 2002-1 C.B. 327, as modified by Rev. Proc. 2004-11, 2004-3 I.R.B. 311, as applicable.

Set forth below in question and answer format are inquires the Service has received on how to apply CC-2004-007.

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Q-1. If CC-2004-007 applies to a taxpayer's change in computing depreciation and the taxpayer files amended federal tax returns to implement this change, is there an adjustment under section 481?

A-1. By filing amended federal tax returns to implement the change in computing depreciation, the taxpayer is taking the position that this change is not a change in method of accounting under section 446(e). Accordingly, an adjustment under section 481 is neither required nor permitted.

Q-2. If CC-2004-007 applies to a taxpayer's change in computing depreciation for depreciable asset X, may the taxpayer file amended federal tax returns to implement this change for some taxable years and file a Form 3115 to implement the change for other taxable years?

A-2. No. The taxpayer has only two choices to implement the change in computing depreciation. The taxpayer may either (i) take the position that the taxpayer's change in computing depreciation for depreciable asset X is not a change in method of accounting under section 446(e) and, as a result, file amended federal tax returns for the earliest year open under the period of limitations for assessment under section 6501(a) ("earliest open year") or the earliest year under examination by the Service ("earliest exam year") but in no event earlier than the placed-in-service year of depreciable asset X, and all subsequent affected taxable years, to implement the change in computing depreciation, or (ii) treat the taxpayer's change in computing depreciation for depreciable asset X as a change in method of accounting under section 446(e) and, consequently, file a Form 3115 for the current taxable year under Rev. Proc. 97-27 or Rev. Proc. 2002-9, as applicable.

Similarly, if CC-2004-007 applies to two or more changes in computing depreciation for depreciable asset X (for example, a change in depreciation method and a change in recovery period), the taxpayer may not implement one or more of these changes for depreciable asset X (for example, the change in depreciation method) by filing amended federal tax returns and the other changes in computing depreciation for depreciable asset X (for example, the change in recovery period) by filing a Form 3115. Accordingly, all of the changes in computing depreciation for depreciable asset X must be made in the same manner.

Q-3. If CC-2004-007 applies to a taxpayer's change in computing depreciation and the taxpayer filed a Form 3115 with the taxpayer's federal tax return before the issuance of CC-2004-007 to implement this change as a change in method of accounting under section 446(e) under an automatic method change revenue procedure (for example, Rev. Proc. 2002-9), may the taxpayer now "unwind" the Form 3115 and file amended federal tax returns to implement the change? Similarly, if CC-2004-007 applies to a taxpayer's change in computing depreciation that was requested by the taxpayer on a Form 3115 filed under Rev. Proc. 97-27 and, before the issuance of CC-2004-007, the taxpayer received a letter ruling that granted consent to make this change and the taxpayer executed the related Consent Agreement (as defined in section 8.11 of Rev.

Proc. 97-27), may the taxpayer now “unwind” the Form 3115 and file amended federal tax returns to implement the change?

A-3. Yes, but only if the year of change for which the taxpayer’s Form 3115 was effective and all subsequent affected taxable years during the section 481(a) adjustment period are open under the period of limitations for assessment under section 6501(a) and the taxpayer now takes the position that the taxpayer’s change in computing depreciation is not a change in method of accounting under section 446(e). To implement this position, the taxpayer must file amended federal tax returns (i) for the taxable year(s) for which the Form 3115 was implemented and all subsequent affected taxable years (beginning with the year of change the taxpayer’s Form 3115 was effective) to reflect taxable income without the adjustment under section 481 and without the new method of computing depreciation described in the Form 3115 or the letter ruling, as applicable, and any collateral adjustments, and (ii) for the earliest open year or the earliest exam year but in no event earlier than the placed-in-service year of the depreciable asset, and all subsequent affected taxable years, to implement the change in computing depreciation.

If the taxpayer’s Form 3115 involved a change in computing depreciation for two or more depreciable or amortizable assets (for example, depreciable assets *R*, *S*, *T*, and *U*), the taxpayer may take the position that the change in computing depreciation for some assets (for example, depreciable assets *R* and *U*) is not a change in method of accounting and the change in computing depreciation for the other assets (for example, depreciable assets *S* and *T*) is a change in method of accounting. In this situation, the taxpayer must modify its Form 3115 (including a Form 3115 filed under Rev. Proc. 97-27) to reflect the specific depreciable or amortizable assets to which the Form 3115 applies and the revised adjustment under section 481, and file this revised Form 3115, under the same terms and conditions applicable to the taxpayer’s original Form 3115, with the amended federal tax return for the year of change the taxpayer’s original Form 3115 was effective. If the original Form 3115 was filed under Rev. Proc. 97-27, a copy of the executed Consent Agreement must also be attached to this amended federal tax return. Further, the taxpayer must file amended federal tax returns (i) for the taxable year(s) for which the Form 3115 was implemented and all subsequent affected taxable years (beginning with the year of change the taxpayer’s Form 3115 was effective) to reflect the revised adjustment under section 481 and the revised depreciation deduction (and any collateral adjustments), and (ii) for the earliest open year or the earliest exam year but in no event earlier than the placed-in-service year of the depreciable or amortizable asset for which the taxpayer is taking the position that the change in computing depreciation is not a change in method of accounting, and all subsequent affected taxable years, to implement the change in computing depreciation for such asset.

If the taxpayer’s Form 3115 was filed under Rev. Proc. 97-27 and, before the issuance of CC-2004-007, the taxpayer received a letter ruling that granted consent to make the change in computing depreciation to which CC-2004-007 applies and executed the related Consent Agreement, the filing of amended federal tax returns to “unwind” or

