

Part III – Administrative, Procedural, and Miscellaneous

Bonus Depreciation for the Kansas Disaster Area

Notice 2008-67

SECTION 1. PURPOSE

This notice provides procedures for a taxpayer to claim the 50-percent additional first year depreciation (Kansas additional first year depreciation) provided by § 15345(a)(1) and (d)(1) of the Food, Conservation, and Energy Act of 2008 (the Act), Pub. L. No. 110-246, 122 Stat. 1651 (June 18, 2008), for qualified Recovery Assistance property (RA property) placed in service by the taxpayer on or after May 5, 2007, during the taxable year that includes May 5, 2007. This notice also explains how a taxpayer may elect not to deduct the Kansas additional first year depreciation for RA property.

SECTION 2. BACKGROUND AND RA PROPERTY

.01 Section 15345(a)(1) of the Act provides, in general, that § 1400N(d) of the Internal Revenue Code shall apply to the Kansas disaster area. Section 1400N(d), added by § 101 of the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135, 119 Stat. 2577 (Dec. 21, 2005), generally allows a 50-percent additional first year depreciation deduction for qualified Gulf Opportunity Zone property. Section 15345(d)(1) of the Act provides that, with the exception of newly revised dates for determining the eligibility of the Kansas additional first year depreciation deduction for RA property, the rules for determining the eligibility of the Kansas additional first year

depreciation deduction for RA property will be determined by following § 1400N(d)(1) through (5).

.02 RA property is depreciable property that meets all of the following requirements:

(1) The property is described in § 168(k)(2)(A)(i) and § 1.168(k)-1(b)(2)(i) of the Income Tax Regulations, or the property is nonresidential real property (as defined in § 168(e)(2)(B)) or residential rental property (as defined in § 168(e)(2)(A)) and depreciated under § 168;

(2) Substantially all of the use of the property is in the Kansas disaster area (as defined in § 15345(b) of the Act and section 2.04 of this notice) and in the active conduct of a trade or business by the taxpayer in the Kansas disaster area. For purposes of this section 2.02(2), rules similar to the rules in section 3 of Notice 2006-77, 2006-2 C.B. 590, for determining “substantially all” and “active conduct of a trade or business” apply;

(3) The original use of the property commences with the taxpayer in the Kansas disaster area on or after May 5, 2007. Used property will satisfy the original use requirement so long as the property has not been previously used within the Kansas disaster area. For purposes of this section 2.02(3), rules similar to the original use rules in section 5 of Notice 2007-36, 2007-17 I.R.B. 1000, apply;

(4) The property is acquired by the taxpayer by purchase (as defined in § 179(d) and § 1.179-4(c)) on or after May 5, 2007, but only if no written binding contract for the acquisition of the property was in effect on or before May 4, 2007. For purposes of this section 2.02(4), rules similar to the rules in § 1.168(k)-1(b)(4)(ii)

(binding contract), in § 168(k)(2)(E)(i) and § 1.168(k)-1(b)(4)(iii) (self-constructed property), and in § 168(k)(2)(E)(iv) and § 1.168(k)-1(b)(4)(iv) (disqualified transactions) apply; and

(5) The property is placed in service by the taxpayer on or before December 31, 2008 (December 31, 2009, in the case of qualified nonresidential real property and residential rental property).

.03 Depreciable property is not eligible for the Kansas additional first year depreciation deduction if:

(1) The 50-percent additional first year depreciation deduction under § 168(k), as amended by § 103 of the Economic Stimulus Act of 2008, Pub. L. No. 110-185, 122 Stat. 613 (Feb. 13, 2008), applies to the property;

(2) The property is described in § 168(k)(2)(D)(i) and § 1.168(k)-1(b)(2)(ii)(A)(2);

(3) The property is described in § 168(f);

(4) Any portion of the property is financed with the proceeds of any obligation the interest on which is tax-exempt under § 103;

(5) The property is a qualified revitalization building (as defined in § 1400l(b)) for which the taxpayer has made an election under § 1400l(a)(1) or (a)(2) in accordance with section 7 of Rev. Proc. 2003-38, 2003-1 C.B. 1017;

(6) The property is included in any class of property for which the taxpayer elects not to deduct the Kansas additional first year depreciation (see section 4 of this notice);

(7) The property is placed in service and disposed of during the same taxable year. However, rules similar to the rules in § 1.168(k)-1(f)(1)(ii) and (iii) (technical termination of a partnership under § 708(b)(1)(B) or transactions described in § 168(i)(7)) apply; or

(8) The property is converted from business or income-producing use to personal use in the same taxable year in which the property is placed in service by a taxpayer.

.04 The counties in Kansas that comprise the Kansas disaster area are: Barton, Clay, Cloud, Comanche, Dickinson, Edwards, Ellsworth, Kiowa, Leavenworth, Lyon, McPherson, Osage, Osborne, Ottawa, Phillips, Pottawatomie, Pratt, Reno, Rice, Riley, Saline, Shawnee, Smith, and Stafford.

.05 If depreciable property is not RA property in the taxable year in which the property is placed in service by the taxpayer, the Kansas additional first year depreciation deduction is not allowable for the property even if the property subsequently becomes RA property due to a change in use. See § 1.168(k)-1(f)(6)(iv)(B).

.06 Limitation provisions of the Code (for example, §§ 465, 469, and 704(d)) apply and may limit the amount of the Kansas additional first year depreciation deduction that may be claimed by a taxpayer subject to such a provision.

.07 If RA property is no longer RA property in the hands of the same taxpayer at any time before the end of the RA property's recovery period as determined under § 167(f)(1) or § 168, as applicable, then the taxpayer generally must recapture in the taxable year in which the RA property is no longer RA property the benefit derived from

claiming the Kansas additional first year depreciation deduction for such property. See § 1400N(d)(5). For purposes of this section 2.07, rules similar to the recapture rules in section 3 of Notice 2008-25, 2008-9 I.R.B. 484, apply.

SECTION 3. CLAIMING THE KANSAS ADDITIONAL FIRST YEAR DEPECIATION FOR THE TAXABLE YEAR THAT INCLUDES MAY 5, 2007

.01 In General. The Kansas additional first year depreciation deduction is allowable in the taxable year in which the RA property is placed in service by the taxpayer. The computation of the allowable Kansas additional first year depreciation deduction and the otherwise allowable depreciation deduction for RA property is made in accordance with rules similar to the rules for 50-percent bonus depreciation property in § 1.168(k)-1(d)(1)(i), (1)(iii), and (2). Further, rules similar to the rules in § 1.168(k)-1(f) apply for purposes of the Kansas additional first year depreciation deduction.

.02 Returns Not Filed for the Taxable Year that Includes May 5, 2007. If a taxpayer has not filed its federal tax return for the taxable year that includes May 5, 2007, and wants to claim the Kansas additional first year depreciation for a class of property (as defined in section 4.02 of this notice) that is RA property placed in service by the taxpayer on or after May 5, 2007, during the taxable year that includes May 5, 2007, the taxpayer may claim the Kansas additional first year depreciation for that class of property on line 14 of Form 4562, Depreciation and Amortization, for the federal tax return for the taxable year that includes May 5, 2007. If the RA property is listed property under § 280F(d)(4), such as passenger automobiles or computers, the taxpayer may claim the Kansas additional first year depreciation for that listed property

on line 25 of Form 4562, Depreciation and Amortization, for the federal tax return for the taxable year that includes May 5, 2007.

.03 Returns Filed for the Taxable Year that Includes May 5, 2007.

(1) In general. If a taxpayer timely filed its federal tax return for the taxable year that includes May 5, 2007, and did not claim on that return the Kansas additional first year depreciation for a class of property that is RA property placed in service by the taxpayer on or after May 5, 2007, during the taxable year that includes May 5, 2007, but wants to do so, the taxpayer may claim the Kansas additional first year depreciation for that class of property under this section 3.03, provided the taxpayer did not make an election not to deduct the Kansas additional first year depreciation for the class of property pursuant to section 4.03 of this notice. The taxpayer has the option of claiming the Kansas additional first year depreciation for the taxable year that includes May 5, 2007:

(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) on or before December 31, 2009, for the taxable year that includes May 5, 2007, and any affected subsequent taxable year, and including the statement "Filed Pursuant to Notice 2008-67" at the top of any amended 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 includes May 5, 2007, if this return has not been filed on or before August 11, 2008, 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 includes May 5, 2007, was filed on or before August 11, 2008, by --

(i) filing an amended federal tax return (or a qualified amended return) on or before December 31, 2009, for the first taxable year succeeding the taxable year that includes May 5, 2007, attaching a Form 3115 to the amended federal tax return, and including the statement "Filed Pursuant to Notice 2008-67" at the top of any amended 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 includes May 5, 2007, 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, 2002-1 C.B. 327 (as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified, clarified, and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432, and as modified and clarified by Announcement 2002-17, 2002-1 C.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) For purposes of section 6.02(4)(a) of Rev. Proc. 2002-9, the taxpayer must include on line 1a of the Form 3115 the designated automatic accounting method change number 115.

SECTION 4. ELECTION NOT TO DEDUCT THE KANSAS ADDITIONAL FIRST YEAR DEPRECIATION

.01 In General. A taxpayer may make an election not to deduct the Kansas additional first year depreciation for any class of property that is RA property placed in service during the taxable year. See § 1400N(d)(2)(B)(iv). If a taxpayer makes this election, then the election applies to all RA property that is in the same class of property and placed in service in the same taxable year, and no Kansas additional first year depreciation deduction is allowable for the class of property. The election not to deduct the Kansas additional first year depreciation is made by each person owning RA property (for example, for each member of a consolidated group by the common parent of the group, by the partnership, or by the S corporation). In addition, rules similar to the rules in § 1.168(k)-1(e)(5) (failure to make election), (6) (alternative minimum tax), and (7) (revocation of election) apply for purposes of the election not to deduct the Kansas additional first year depreciation deduction.

.02 Definition of Class of Property. For purposes of this notice, the term “class of property” means:

(1) Except for the property described in this section 4.02(2), (3), (4), (5), and (6), each class of property described in § 168(e) (for example, 5-year property);

(2) Water utility property as defined in § 168(e)(5) and depreciated under § 168;

(3) Computer software as defined in, and depreciated under, § 167(f)(1) and the regulations thereunder;

(4) Qualified leasehold improvement property as defined in § 168(k)(3) and § 1.168(k)-1(c) and depreciated under § 168;

(5) Nonresidential real property as defined in § 168(e)(2)(B) and depreciated under § 168; or

(6) Residential rental property as defined in § 168(e)(2)(A) and depreciated under § 168.

.03 Time and Manner of Making the Election.

(1) In general. Except as provided in section 4.03(3) of this notice, an election not to deduct the Kansas additional first year depreciation for any class of property that is RA 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 RA property is placed in service by the taxpayer. Except as provided in sections 4.03(2) and (3) of this notice, the election not to deduct the Kansas additional first year depreciation must be made in the manner prescribed on Form 4562, Depreciation and Amortization, and its instructions.

(2) Returns for the taxable year that includes May 5, 2007, filed on or after August 11, 2008. If a taxpayer files its federal tax return for the taxable year that includes May 5, 2007, on or after August 11, 2008, and wants to make the election not to deduct the Kansas additional first year depreciation for any class of property that is RA property placed in service by the taxpayer on or after May 5, 2007, during the taxable year that includes May 5, 2007, the taxpayer must follow the instructions for that taxable year's Form 4562, Depreciation and Amortization (see "Election Out" on page 4 of the 2006 or 2007 Instructions for Form 4562). Pursuant to those instructions, the

taxpayer attaches a statement to its timely filed return (including extensions) identifying the class of property for which the taxpayer is making the election and indicating that, for such class of property, the taxpayer is electing not to claim the Kansas additional first year depreciation.

(3) Special rules for returns for the taxable year that includes May 5, 2007, filed before August 11, 2008.

(a) If a taxpayer files its federal tax return for the taxable year that includes May 5, 2007, before August 11 2008, then the taxpayer has made the election not to deduct the Kansas additional first year depreciation for a class of property that is RA property placed in service by the taxpayer on or after May 5, 2007, during the taxable year that includes May 5, 2007, if the taxpayer:

(i) made the election within the time prescribed in section 4.03(1) of this notice and in the manner prescribed in section 4.03(2) of this notice;

(ii) made the election within the time prescribed in section 4.03(1) of this notice and included with the taxpayer's federal tax return for the taxable year that includes May 5, 2007, an affirmative statement to the effect that the taxpayer is not deducting the Kansas 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 bonus for 5-year property"); or

(iii) made the deemed election provided for in section 4.03(3)(b) of this notice.

(b) Deemed election. If section 4.03(3)(a)(i) or (ii) of this notice does not apply, a taxpayer that files its federal tax return for the taxable year that

includes May 5, 2007, before August 11, 2008, will be treated as having made the election not to deduct the Kansas additional first year depreciation for a class of property that is RA property placed in service by the taxpayer on or after May 5, 2007, during the taxable year that includes May 5, 2007, if the taxpayer:

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

(ii) does not file an amended federal tax return (or qualified amended return) or a Form 3115 within the time and in the manner prescribed in section 3.03(1) of this notice to claim the Kansas additional first year depreciation for that class of property for the taxable year that includes May 5, 2007.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Douglas H. Kim of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Mr. Kim at (202) 622-4930 (not a toll-free call).