

INTERNAL REVENUE SERVICE

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CC:PSI:6-COR-121473-00

January 16, 2001

Re: Request to Revoke Section 179 Election

[REDACTED]

Tax Year: 1998

Dear [REDACTED]

This letter is in response to your letter dated October 5, 2000, to Commissioner of Internal Revenue, requesting permission to revoke the election made under section 179 of the Internal Revenue Code on your 1998 federal income tax return. In order for us to respond to your specific request, you must submit a request for a private letter ruling. The request must comply with all the requirements of section 8 of Revenue Procedure 2001-1, 2001-1 I.R.B. 1. We hope that you find the following general information to be helpful.

Rev. Proc. 2001-1 provides the general procedures the Internal Revenue Service follows in issuing rulings and the related instructions for the submission of ruling requests by taxpayers. In addition, taxpayers are required by statute to pay user fees for requests for letter rulings. Under section 15 of Rev. Proc. 2001-1, the user fee must accompany the request in order to be processed by the Service. In general, the user fee is \$5,000 for private letter rulings mailed before March 1, 2001, and is \$6,000 for private letter rulings mailed on or after March 1, 2001. However, there is a reduced fee of \$500 for a request involving a business-related tax issue from a taxpayer with a gross income of less than \$1 million. See Appendix A of Rev. Proc. 2001-1.

I am enclosing a copy of section 179 of the Code and the regulations under that section. You may find section 179(c)(2) of particular interest. Under section 179(c)(2), an election made under section 179, and any specification contained in any such election, may not be revoked except with the consent of the Commissioner. Such consent to revoke an election under section 179, however, will be granted only in

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extraordinary circumstances (Emphasis added). See section 1.179-5(b) of the Income Tax Regulations.

If you should decide to request a private letter ruling, section 8.03(1) of Rev. Proc. 2001-1 provides information as to where to send the request. Also, as we have noted above, section 8 of Rev. Proc. 2001-1 provides general instructions for requesting a private letter ruling.

A private letter ruling request for revocation of an election made under section 179 of the Code presupposes that the election is a valid election under section 179 (Emphasis added). See sections 179(c) and 179(d). Section 179 allows a taxpayer to elect to deduct all or part of the cost of certain qualifying property in the year the taxpayer places it in service. The election made under section 179 is made in lieu of recovering the cost by taking depreciation deductions over a specified recovery period under section 168. Thus, the general principles of depreciation that apply to section 168 also apply to section 179.

In general, a taxpayer must have an economic interest (i.e., an ownership interest) in depreciable property in order to take the depreciation deduction under section 168. The purchaser of depreciable property involved in a sales agreement, in which the purchaser is deemed the owner for tax purposes, should depreciate the property and, provided the requirements of sections 179(c) and 179(d) are met, may make a valid election under section 179 with respect to the cost of the property. However, a lessee leasing depreciable property as a result of a leasing agreement, which is deemed a lease for tax purposes, should not depreciate the property or make a valid election under section 179. The determination of whether, in a particular transaction, the taxpayer is a purchaser or a lessee of depreciable property in the year the property is placed in service requires the analysis of the underlying agreement to the transaction and the particular facts and circumstances surrounding the agreement.

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This letter has called your attention to certain general principles of tax law. It is intended for informational purposes only and does not constitute a ruling. See section 2.04 of Rev. Proc. 2001-1. We hope the materials enclosed will be helpful to you; however, if you should have any additional questions or comments, please contact our office at (202) 622-3110.

Sincerely yours,

Kathleen Reed

KATHLEEN REED
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)