

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

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Refer Reply To:

CC:PSI:B06 – CONEX-163364-03

Date:

December 02, 2003

Dear _____ :

I am responding to your email of September 29, 2003, to Congressman _____ about the application of the special depreciation allowance to farming businesses. You asked whether the United States Congress intended to exclude farming business taxpayers that made the election under section 263A(d)(3) of the Internal Revenue Code (the Code), from being eligible for the special depreciation allowance provisions under section 168(k) for depreciable property used in farming businesses. Congressman _____ asked us to respond directly to you.

If a taxpayer makes an election under section 263A(d)(3), the provisions of section 263A do not apply to any plant produced in any farming business carried on by the taxpayer. A taxpayer can only make this election for the taxpayer's first taxable year which begins after December 31, 1986, while engaged in a farming business (section 263A(d)(3)(D) of the Code). Once a taxpayer makes this election, only the Secretary of the Treasury can revoke it.

If the taxpayer (or any related person) makes an election under section 263A(d)(3), the provisions of section 168(g)(2) (alternative depreciation system) apply to all property of the taxpayer used predominantly in the farming business and placed in service in any taxable year the election is in effect (section 263A(e)(2)).

Section 101 of the Job Creation and Worker Assistance Act of 2002 (the "2002 Act"), Pub. L. No. 107-147, 116 Stat. 21, added section 168(k) of the Code. Subsequently, Section 201 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "2003 Act"), Pub. L. No. 108-27, 117 Stat. 752, amended the section. Section 168(k) generally allows a 30-percent additional first year depreciation deduction for certain depreciable property acquired after September 10, 2001, and before May 6, 2003, and a 50-percent additional first year depreciation deduction for certain depreciable property acquired after May 5, 2003.

While most new depreciable tangible property qualifies for the additional first year depreciation deduction, certain property is not eligible for this deduction. For example, any property the alternative depreciation system of section 168(g) applies to, determined without regard to section 168(g)(7) (relating to election to have the alternative depreciation system apply), and after application of section 280F(b) (relating to listed property with limited business use) is not eligible for this deduction (section 168(k)(2)(C)(i)).

Because the alternative depreciation system of section 168(g) applies to property the taxpayer made the election for under section 263A(d)(3), this property is not eligible for the additional first year depreciation deduction. This result occurs because section 168(k)(2)(C)(i) does not provide an exception for property the taxpayer made the election for under section 263A(d)(3).

You requested the committee reports related to section 168(k). The Congress introduced the bill introducing the 2002 Act on October 11, 2001. I have enclosed the relevant pages of the House of Representatives Report No. 107-251 and the Senate Finance Committee Report No. 107-49. The Joint Committee on Taxation also prepared technical explanations of the various versions of the bill. I have also attached the relevant pages of these technical explanations.

For the 2003 Act, the Congress introduced the bill amending section 168(k) on February 27, 2003. I have enclosed the relevant pages of the House of Representatives Reports No. 108-94 and No. 108-126 (Conference Report).

I hope this letter is helpful. If you would like to discuss this matter further, please call
at .

Sincerely,

CHARLES B. RAMSEY

Charles B. Ramsey
Chief, Branch 6
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (7)