



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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Dear _____ :

This letter responds to your letter dated March 1, 2012, requesting a response to the question of whether an S corporation that is a member of a controlled group of corporations (within the meaning of section 1563(a)) can make a section 179 election up to the full amount specified in section 179(b) (the "maximum election amount").

Section 179(a) provides that a taxpayer may elect to treat the cost of any section 179 property as an expense which is not chargeable to capital account. Section 179(a) further provides any cost so treated shall be allowed as a deduction for the taxable year in which the section 179 property is placed in service.

Section 179(b) provides a dollar limitation on the amount of the aggregate cost which may be taken into account under section 179(a). Section 179(d)(6)(A) provides that for purposes of section 179(b) all component members of a controlled group shall be treated as one taxpayer. Section 179(d)(7) provides that for purposes of section 179(d)(6), the term controlled group has the meaning assigned to it by section 1563(a) with certain modifications.

Section 1563(a) defines four types of controlled groups of corporations. In order for a corporation to be included in one of these controlled groups under section 1563(a), it must satisfy the stock ownership test for that type of group. Other rules in section 1563 may also apply in order to determine whether a corporation satisfies the applicable stock ownership test.

Section 1563(b) describes which corporations are component members of a section 1563(a) controlled group of corporations, in part by excluding certain corporations (excluded members) under section 1563(b)(2). See sections 1563(b)(2)(B) through 1563(b)(2)(E) and §1.1563-1(b)(2)(ii). Notwithstanding that a corporation that is treated as an excluded member is not a component member, it is nevertheless treated as a member of the group. See §1.1563-1(a)(1)(ii).

An S corporation is treated as an excluded member of a controlled group. See §1.1563-1(b)(2)(ii)(C). As noted above, pursuant to §1.1563-1(a)(1)(ii), it is a member of a controlled group for purposes of section 1563(a). As also noted above, section 179(d)(6)(A) applies the controlled group rules of section 1563(a) by only taking into account the component members of a controlled group. Since an S corporation is not a component member of a controlled group, section 179(d)(6)(A) does not apply. Thus, an S corporation may make a section 179 election up to the maximum election amount, even if it is otherwise a member of a controlled group of corporations for purposes of section 1563(a).

This letter describes certain general principles of Federal income tax law. It is intended for informational purposes only and does not constitute a ruling. See §2.04 of Rev. Proc. 2012-1, 2012-1 IRB 1, 7 (Jan. 3, 2012).

Please do not hesitate to contact me if you have any further questions. I can be reached at

Sincerely,

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By: _____
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