

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-152549-03

RIN 1545-BC69

Section 179 Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under section 179 of the Internal Revenue Code relating to the election to expense the cost of property subject to section 179. The temporary regulations reflect changes to the law made by the Jobs and Growth Tax Relief Reconciliation Act of 2003. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by November 2, 2004.

Requests to speak with outlines of topics to be discussed at the public hearing scheduled for Tuesday, November 30, 2004, at 10 a.m., must be received by November 9, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-152549-03), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC, 20044.

Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-152549-03), Courier-s Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the IRS Internet site at: www.irs.gov/regs or via the Federal eRulemaking Portal at www.regulations.gov (IRS - REG-152549-03). The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Winston Douglas, (202) 622-3110; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Robin Jones, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 4, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the **Internal Revenue Service**, including whether the

information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in §§1.179-2T and 1.179-5T. This information is required by §1.179-2T to insure that married individuals filing separate returns properly allocate the cost of section 179 property elected to be expensed in a taxable year and that the dollar limitation is properly allocated among the component members of a controlled group. Also, this information is required by §1.179-5T to insure the specific identification of each piece of acquired section 179 property and reflect how and from whom such property was placed in service. This information will be used for audit and examination purposes. The collection of information is required to obtain a benefit. The likely respondents and/or recordkeepers are individuals, farms, and small businesses.

Estimated total annual reporting and/or recordkeeping burden: 3,015,000 hours.

The estimated annual burden per respondent/recordkeeper varies from .50 to 1 hour, depending on individual circumstances, with an estimated average of .75 hour.

Estimated number of respondents and/or recordkeepers: 4,025,000

Estimated frequency of responses: Annually

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to section 179 of the Internal Revenue Code (Code). The temporary regulations provide guidance under section 179 for making and revoking elections to expense the cost of property subject to section 179. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a

significant economic impact on a substantial number of small entities. This certification is based upon the fact, as discussed earlier in this preamble, that the amount of time necessary to record and retain the required information will be minimal for those taxpayers electing to expense the cost of section 179 property. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 30, 2004, beginning at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 9, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Winston H. Douglas, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 reads as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.179-2 is amended by revising paragraphs (b)(1) and (b)(2)(ii) to read as follows:

§1.179-2 Limitations on amount subject to section 179 election.

* * * * *

(b) * * *

(1) [The text of the proposed amendment to §1.179-2(b)(1) is the same as the text of §1.179-2T(b)(1) published elsewhere in this issue of the **Federal Register**].

(2) * * *

(i) * * *

(ii) [The text of the proposed amendment to §1.179-2(b)(2)(ii) is the same as the text of §1.179-2T(b)(2)(ii) published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.179-4 is amended by revising paragraph (a) to read as follows:

§1.179-4 Definitions.

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(a) [The text of the proposed amendment to §1.179-4(a) is the same as the text of §1.179-4T(a) published elsewhere in this issue of the **Federal Register**].

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Par. 4. Section 1.179-5 is amended by adding paragraph (c) to read as follows:

§1.179-5 Time and manner of making election.

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(c) [The text of the proposed amendment of §1.179-5(c) is the same as the text of §1.179-5T(c) published elsewhere in this issue of the **Federal Register**].

Par. 5. Section 1.179-6 is revised to read as follows:

§1.179-6 Effective date.

[The text of the proposed amendment to §1.179-6 is the same as the text of

§1.179-6T published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved: July 21, 2004.