

2009 - Section 179 Eligibility Checklist

Tax Year for Eligibility

- Assets are eligible for the Section 179 deduction the year the property is placed in service [IRC Sec 179(a)]. Placed in service means available to the taxpayer for the asset's intended business use.
- The eligible asset must be acquired by purchase for use in the active conduct of a trade or business [IRC Sec 179(d)(1)(C)].

Annual Dollar Limit

- The maximum deduction for 2009 is \$250,000 and \$134,000 for 2010.
- Limit applies separately at the 1065 or 1120S level, as well as at the 1040 level.
- **Caution:** If an individual receives Section 179 allocations over the annual dollar limit (i.e., from several pass-through partnerships that are not coordinated), the excess allocation is wasted [Rev. Rul. 89-7]. However, a later revocation could be made by a pass-through entity to reduce its Section 179 amount.
- A \$25,000 limit applies for SUVs with a GVWR (gross vehicle weight rating) over 6,000 lbs. (defined to include a pickup truck with an interior box length of under 6 feet). An over-6,000 lb. pickup with a 6 ft. or greater box may be fully expensed.
- An amended return election is permitted [Reg. 1.179-5(c)].

Asset Addition Phase-out Limit

- Section 179 deduction phases out dollar for dollar as eligible asset purchases exceed \$800,000 for tax years beginning in 2009 and \$530,000 for 2010.
- Asset additions inside pass-through entities do **not** count against the asset addition limit of an owner of the entity.

Taxable Income Limit

- Section 179 deduction cannot exceed aggregate taxable income derived from active businesses.
- This limit applies at the entity level (1065 or 1120S) as well as at 1040 level.
- Business income, per Reg. 1.179-2(c), includes Section 1231 gains and losses, Section 1245 and 1250 depreciation recapture income, interest income from working capital of a business, wage income, and actively managed rental property. Both spouses count as one in a joint 1040 for this test.
- Business income does not include portfolio income sources, NOLs carried to the year, the 50% SE tax deduction, and a business/rental source from which the taxpayer does not "meaningfully participate in management or operations."
- Any Section 179 deduction limited by business taxable income becomes a carryforward to the next taxable year.

Eligible Assets

- Property subject to Section 1245 depreciation recapture, including single purpose ag structures.
- Property acquired by purchase (only boot counts if acquired via trade).

- Asset must be more than 50% used in an active trade or business.

Ineligible Assets

- Acquired from a related party (spouse, lineal descendant or ancestor, and a more-than-50% controlled entity).
- Purchases by an estate or trust, as well as pass-through allocations of a Section 179 deduction to an estate or trust [Reg. 1.179-1(f)(3)].
- Property used in the furnishing of lodging, except for hotel and motel operations. This precludes purchases used in connection with apartment buildings and corporate-provided farm employee lodging [IRC Sec. 179(d)(1); IRC Sec. 50(b)(2)].
- Property leased to others under the noncorporate lessor rules, **unless**:
 - The term of the lease is less than 50% of the depreciable life of the property, and
 - During the first 12 months of the lease, the deductions to the lessor with respect to the property (other than taxes, interest and depreciation) exceed 15% of the rental income produced by the property.

Observation: This second test of incurring expenditures that exceed 15% of the rent in the first 12 months will often disqualify Section 1245 improvements made by landlords.

Controlled Group Members

- Members of a controlled group are treated as one with respect to the various Section 179 limits.
- The controlled group definition refers to the Section 1563 parent-sub or brother-sister definitions, but applies a "more than 50%" rather than "at least 80%" test.
- The Section 179 deduction may be allocated by election of the members per Reg. 1.179-2(b)(7).

Examples of Qualifying Farm Assets for Section 179 Deduction

- Water wells (15 yr.)
- Drainage facilities (15 yr.)
- Single purpose ag structures and horticultural structures (10 yr.)
- Grain bins (7 yr.)
- Farm machinery and equipment (5 yr. new or 7 yr. used)
- Fences – ag (7 yr.)
- Office equipment, furniture and fixtures (7 yr.)
- Computers, calculators and copiers (5 yr.)
- Dairy or breeding cattle (5 yr.)
- Trucks, and automobiles (5 yr.), but beware of depreciation caps on vehicles under 6,000 lbs. per IRC Sec. 280F.
- Hogs – breeding (3 yr.)
- Tractor units – over the road (3 yr.)
- Vines and orchards (10 yr.)