

Generally, the cost of property placed in service in a trade or business can't be deducted in the year it's placed in service if the property will be useful beyond the year. Instead, the cost is "capitalized" and depreciation deductions are allowed for the property, but are spread out over a period of years (a "cost recovery period"). Capitalization delays the tax benefits of business expenditures. For example, you may spend \$50,000 on a new computer system today, but must spread your depreciation deductions over a five-year period. That's why the election to take immediate deductions is valuable.

The expense election is made available, on a tax year by tax year basis, under Section 179 of the Internal Revenue Code (the "Code"), and is often referred to as the "Section 179 election" or the "Code Section 179 election."

Subject to a dollar limit, the election allows you to deduct, in the tax year for which the election is made, the cost of qualifying property (described below) placed in service during the tax year. The immediate deductions allowed are in lieu of capitalization and later depreciation deductions. The deduction limit is \$250,000 for tax years beginning in 2008. (Before enactment of the Economic Stimulus Act of 2008, the limit was scheduled to be \$128,000 for 2008, up from \$125,000 for 2007; the Economic Stimulus Act increased the limit to \$250,000 for tax years beginning in 2008 for the purpose of encouraging near-term investment in plant and equipment.) The limit will return to \$125,000 (as adjusted for inflation since 2007) in 2009 and 2010. However, for tax years beginning after 2010 (i.e., 2011 and later) the deduction limit is scheduled to drop to \$25,000. As discussed below, the deduction is phased-out (i.e. gradually reduced) if more than \$800,000 of qualifying property is placed in service during tax years beginning in 2008, or if taxable income from your trade or business is relatively low for that tax year. On the other hand, higher limits apply to certain property used in a qualified business in an empowerment zone, a renewal community, or the Gulf Opportunity Zone.

Qualifying property. To qualify for the election, the property must be "tangible personal" property. This means that real estate (land, buildings, and their structural components) does not qualify, nor do intangibles such as patent rights. However, for tax years beginning before Jan. 1, 2011, off-the-shelf computer software qualifies. Also, to qualify, property must be "purchased." Thus, if you acquired the property in a tax-free exchange or from an individual or entity to which you bear a close relationship specified in the Code, the property does not qualify.

Dollar limit. The dollar limit doesn't mean the election can't be made for property costing more than that amount. For example, if you buy a machine for \$255,000 and place it in service in a business in a tax year beginning in 2008, you can elect to immediately deduct \$250,000 of its cost for that year. The remainder of the cost (\$5,000) is capitalized and depreciated. Also, you can make the election for two or more separate assets, as long as the total cost covered by the election doesn't exceed the dollar limit for that year.

As mentioned above, if the total cost of qualifying property that you place in service during a tax year beginning in 2008 is over \$800,000 (the "phaseout" amount), the immediate deduction limit is reduced by that extra amount. For example, if you place in service \$810,000 of qualifying property in a tax year beginning in 2008, you can make the election for no more than \$240,000 of property (\$250,000 minus \$10,000 [excess of \$810,000 over \$800,000]). (Before the enactment of the 2008 Economic Stimulus Act, the phaseout amount was scheduled to be \$510,000 for 2008, up from \$500,000 for 2007. But, to encourage business investment in plant and equipment, the Economic Stimulus Act increased the phaseout amount to \$800,000 for tax years beginning in 2008.) The phaseout amount will return to \$500,000 (as adjusted for inflation since

2007) in 2009 and 2010. For tax years beginning after 2010, the phaseout amount is scheduled to drop to \$200,000.

You should also be aware that, in addition to liberalizing the expensing limits, the 2008 Economic Stimulus Act provides for additional first-year bonus depreciation of 50% of the adjusted basis of qualified property placed in service in 2008. Together, the increased expensing limits and the 50% additional first-year bonus depreciation allowance, both of which apply to property placed in service in 2008, provide a potent incentive to accelerate into tax years beginning in 2008 purchases of machinery and equipment being contemplated to be placed in service in later years.

Taxable income limit. Also, as mentioned above, if your taxable income from all of your trades or businesses is less than the dollar limit for that year, the amount for which you can make the election is limited to that taxable income. However, any amount you can't immediately deduct because of the taxable income limitation is carried forward and may be deducted in later years (to the extent that the applicable dollar limit, the phaseout rule and the taxable income limit permit).

Recapture. If you dispose of the property, or stop using it in a trade or business, before the end of the cost recovery period that would have applied to the property had you not made the election for the property, all or part of the amount of the deduction you claimed under the election must be taken back into income ("recaptured"). Exactly how much will depend on the type of property and how long you used the property in a trade or business.

The above information covers the essential elements of the Code Section 179 election. Clearly, many considerations go into each decision to acquire business assets, and many involve non-tax factors. However, the election should play a role; accelerated tax benefits may enable you to obtain the property you need earlier and at reduced after-tax costs.