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FIXED ASSETS

► SUBJECT

CLARIFYING CONFLICTING GUIDANCE: DEPRECIATION CLASSIFICATION OF WIRELESS TELECOMMUNICATION ASSETS

► DETAILS

Depreciable assets are generally classified according to the provisions of Rev. Proc. 87-56, which was issued before wireless telecommunication networks were as common or developed as they are now. Attempts to classify modern technology within this older framework have led to depreciation classification conflicts between taxpayers and the Internal Revenue Service. In particular, two recent authorities appear to have treated wireless telecommunication assets - antenna systems, antenna support structures, and certain cell site equipment - differently for federal tax depreciation purposes.

In April, 2011, the Service issued a safe harbor method in Rev. Proc. 2011-22 for the depreciation classification of wireless telecommunication assets. This safe harbor method specifically categorizes the following assets as personal property with no class life and, therefore, with a recovery period of seven years:

- Antenna systems, including the antenna itself, antenna cables, and remote electrical tilt equipment;
- Antenna support structures/towers affixed to a foundation; and
- Cell site equipment including the hut, microwave equipment, alarms, certain 911 service equipment, and associated cables.

The safe harbor also provides that other equipment may be depreciated over five years (asset class 48.121), such as base station controllers and base transceiver stations, as well as their weather-proof enclosures or cabinets. Equipment dedicated or integral to these stations, such as batteries, generators, and heating, ventilating, and air conditioning systems, also qualify as five-year assets.

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In contrast, longer recovery periods were prescribed in a recent court case published after the issuance of Rev. Proc. 2011-22, *Broz v. Commissioner*, 137 T.C. No. 3 (July 7, 2011), which held in part that antenna support structures have a recovery period of 15 years (asset class 48.14) and cell site equipment, excluding the switch, has a recovery period of ten years (asset class 48.12). However, the decision acknowledges the revenue procedure and apparent discrepancy in depreciation classification.

Because the revenue procedure represents the official position of the Service applicable to all affected taxpayers, this document will be far more relevant to taxpayers than the holding of the Tax Court. Rev. Proc. 2011-22 states that the Service will not disturb a taxpayer's classification of such assets for depreciation purposes, if the safe harbor classifications are followed. Although a footnote in *Broz* states that Rev. Proc. 2011-22 applies to assets placed in service after the latest year at issue in the case, which was 2001, the revenue procedure itself imposes no restriction on recovery periods based on in-services dates. Instead, the revenue procedure merely provides different approaches for effecting a change to follow the safe harbor classifications.

According to Rev. Proc. 2011-22, taxpayers may implement the change in recovery period in one of two ways. For wireless telecommunication assets placed in service in a taxable year ending after December 29, 2003, Form 3115, Application for Change in Accounting Method, must be filed under Rev. Proc. 2011-14 to reclassify those assets to the appropriate recovery period and claim the originally missed depreciation. This process is an automatic change that does not require the prior consent of the Service. A section 481(a) "catch-up" deduction will capture the missed deductions, including missed qualifying bonus depreciation. For wireless telecommunication assets placed in service in a taxable year ended before December 30, 2003 ("pre-2003 assets"), a taxpayer may file amended tax returns for the applicable years, pursuant to the safe harbor provisions of Rev. Proc. 2011-22.

► SUMMARY

Where a taxpayer originally classified its wireless telecommunication assets as 15- or 10-year property, an opportunity may exist to change the recovery period to five or seven years according to the safe harbor method and to claim the additional depreciation expense that was not claimed in prior years.

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