



FINANCE MEMORANDUM 99-4

October 21, 1999

Depreciation for Property Placed in Service Outside New York After 1984 and Before 1994

As a result of a recent court decision, the methods for determining the amount of New York depreciation allowed for certain property placed in service outside New York State have changed. The new methods, explained below, apply to the New York City General Corporation Tax, Unincorporated Business Tax and Banking Corporation Tax.

For property placed in service outside New York State for tax years beginning after 1984 but before 1994 (subject property), New York City did not allow the Accelerated Cost Recovery System (ACRS) or modified ACRS (MACRS) depreciation deduction determined under section 168 of the Internal Revenue Code (IRC). Instead, New York City allowed the depreciation deduction that would have been allowed under IRC section 167 as it was in effect on December 31, 1980.

However, the New York State Supreme Court, Appellate Division, in *R.J. Reynolds Tobacco Co. v City of New York Department of Finance*, 667 N.Y.S.2d 4 (December 9, 1997), held that the New York City provision is unconstitutional, because it violates the Commerce Clause of the United States Constitution by discriminating against owners of out-of-state property. Accordingly, taxpayers will now be allowed to claim the same depreciation as was claimed on the federal tax return for property placed

in service outside New York State in tax years 1985 through 1993.

The New York City Department of Finance realizes that it may be burdensome or unfair to require all taxpayers to switch to IRC section 168 depreciation for the subject property. Therefore, the Department will allow taxpayers, at their option, to continue to use the IRC section 167 depreciation deduction, or to switch to the IRC section 168 depreciation deduction in accordance with the following rules. The deduction chosen by the taxpayer, however, must be used on all subject property owned by the taxpayer.

IRC Section 168 Depreciation

A taxpayer may choose to switch to the IRC section 168 depreciation deduction by either claiming the deduction (that is, by not making the New York depreciation addition and subtraction modifications for the subject property) on an original return filed for a tax year, or by filing an amended return claiming the IRC section 168 depreciation deduction for a prior year.

However, an amended return can be filed only for a prior year if the prior year, and every subsequent year is open under the statute of limitations.

A taxpayer has the option to switch to IRC section 168 depreciation at any time. However, once a taxpayer switches to IRC section 168 depreciation for all of its subject property, the taxpayer must use the IRC section 168 depreciation deduction from that taxable year forward. For example, a taxpayer that

chooses to switch to IRC section 168 depreciation in the year 2000 must use that method for all subsequent years. Similarly, if in 1999 a taxpayer chooses to file an amended return for 1996 and claim a refund resulting from the switch to IRC section 168 depreciation, the taxpayer must apply IRC section 168 depreciation to all tax years after 1996, even if the application results in an additional tax due for one or more of those years.

Upon the sale or disposition of a subject property, the taxpayer must make the applicable depreciation addition or subtraction catch-up modification to bring the New York depreciation deduction on the property to the federal depreciation amount.

IRC Section 167 Depreciation

A taxpayer who chooses to continue using the IRC section 167 depreciation on all of its subject property may do so by making the applicable New York depreciation addition or subtraction uncoupling modifications on the taxpayer's New York tax returns. The taxpayer must continue to make those modifications until the taxpayer chooses (if ever) to switch to IRC section 168 depreciation.

Upon the sale or disposition of a subject property, the taxpayer must make the applicable depreciation addition or subtraction catch-up modification to bring the New York depreciation deduction on the property to the federal depreciation amount.

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