

08-2 December 12, 2008

FINANCE MEMORANDUM**Application of IRC §280F Limits
to Sport Utility Vehicles**

This Finance Memorandum supersedes Finance Memorandum 07-3 and is intended to provide guidance to taxpayers and tax professionals in complying with the New York City tax provisions enacted in 2004 limiting the depreciation and first year expense deductions for sport utility vehicles ("SUVs").

Background. Section 280F of the Internal Revenue Code ("IRC") limits the amount a taxpayer may take as a depreciation deduction under IRC sections 167 or 168 for a passenger automobile. IRC section 280F imposes the same limitations on the amount that a taxpayer may deduct in lieu of depreciation under IRC section 179. (Collectively the "280F limits".) Under IRC section 280F(d)(5), a "passenger automobile" is generally defined as a four-wheeled vehicle "which is manufactured primarily for use on public streets, roads or highways, and which is rated at 6000 pounds unloaded gross weight or less." IRC §280F(d)(5)(i) and (ii). Because SUVs are typically rated at more than 6000 pounds unloaded gross vehicle weight, the 280F limits do not apply to many SUVs.

New York City Decoupling Provisions for SUVs. Part S of Chapter 60 of the Laws of 2004 applies the 280F limits to all SUVs, regardless of weight, for purposes of the New York City General Corporation Tax ("GCT"), Unincorporated Business Tax ("UBT") and Banking Corporation Tax ("Bank Tax") for tax years beginning on and after January 1, 2004 (the "City SUV limits"). On the sale or other disposition of an SUV subject to the City SUV limits, the taxpayer must adjust any gain or loss to be included in City entire net income to reflect the applicable City SUV limits on the taxpayer's depreciation and section 179 deductions.

American Jobs Creation Act of 2004. The American Jobs Creation Act of 2004, P.L. 108-357, (the "AJCA") amended IRC section 179 to limit the amount that a taxpayer may deduct for an SUV in lieu of depreciation to \$25,000 rather than the \$100,000 amount that would otherwise apply. IRC § 179(b)(6). The AJCA is effective for SUVs placed into service on or after October 22, 2004. See AJCA § 910(b).

SUV Defined. The \$25,000 limit on the section 179 deductions for SUVs does not affect the City SUV limits. However, in completing Form NYC-399Z until further notice, taxpayers may rely on the definition of a "sport utility vehicle" enacted by the AJCA, which is as follows:

- (i) In general. The term "sport utility vehicle" means any 4-wheeled vehicle—
 - (I) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails),
 - (II) which is not subject to section 280F, and
 - (III) which is rated at not more than 14,000 pounds gross vehicle weight.

- (ii) Certain vehicles excluded. Such term does not include any vehicle which—
 - (I) is designed to have a seating capacity of more than 9 persons behind the driver's seat,
 - (II) is equipped with a cargo area of at least 6 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or
 - (III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

IRC §179(b)(6)(B).

Economic Stimulus Act of 2008. Section 102 of the Economic Stimulus Act of 2008, Pub.L. No. 110-185, 122 Stat. 613 (Feb. 13, 2008) amended IRC section 168(k). As amended, section 168(k)(1)(A) provides a 50-percent additional first year depreciation deduction for certain new property acquired by the taxpayer after December 31, 2007, and before January 1, 2009 so long as no written binding contract for the acquisition of the property existed prior to January 1, 2008. The Act also amended §168(k)(2)(F)(i) to increase the first year depreciation allowed under §280F(a)(1)(A) by \$8,000 for passenger automobiles to which the 50-percent additional first year depreciation deduction applies. However, as explained below, the Economic Stimulus Act will only affect the applicable City SUV limits with respect to the recovery of the costs of **Qualified Resurgence Zone property** under the Unincorporated Business Tax (UBT) and the Bank Tax.

The limit applicable to a passenger automobile eligible for “bonus depreciation” under IRC section 168(k) in the first year the automobile is placed in service is higher than for other passenger automobiles. However, pursuant to the generally applicable decoupling provisions with respect to bonus depreciation enacted in 2002, which apply to section 168(k) as amended in 2008, the bonus depreciation under IRC 168(k) is only available for qualified New York Liberty Zone property and Qualified Resurgence Zone property. See NYC Local Law 17 of 2002. For GCT purposes for the 2008 tax year, however, SUVs cannot qualify as either Qualified New York Liberty Zone property or Qualified Resurgence Zone property. See Administrative Code §§ 11-602(8)(k) and 11-602(8)(o). Therefore, under the GCT, no bonus depreciation is permitted.

For UBT and Bank Tax purposes, with respect to SUV’s placed into service after December 31, 2007 and before January 1, 2009, bonus depreciation is theoretically available for Qualified New York Liberty Zone property, as defined in IRC section 1400L(b)(2), or Qualified Resurgence Zone property, as defined in sections 11-507(22) and 11-641(p) of the Administrative Code of the City of New York. However, in order to be “Liberty Zone property,” an SUV had to have been placed into service before January 1, 2006. Hence, an SUV placed into service in 2008 cannot qualify as “Liberty Zone property.” Accordingly, for UBT and Bank Tax purposes, the higher 280F limits for bonus depreciation property will apply only to SUVs that are Qualified Resurgence Zone property.

Calculation of City SUV Limits. As explained above, the applicable deduction under the City SUV limits is based on the 280F limits that would apply if the SUV were a "passenger automobile" as defined in that section. The City SUV limits apply to depreciation deductions and IRC section 179 deductions that a taxpayer may take in tax years beginning on and after January 1, 2004 for an SUV regardless of when the SUV was placed in service.

Each year, the Internal Revenue Service publishes the applicable 280F limits for passenger automobiles placed into service during that calendar year. The limit applicable to a passenger automobile eligible for “bonus depreciation” under IRC section 168(k) (as amended by the **Economic Stimulus Act of 2008**) in the first year the automobile is placed in service is higher than for other passenger automobiles. However, as explained above, these higher limits will only apply for UBT and Bank Tax purposes and then only to SUVs that are Qualified

Resurgence Zone property. Note also that no federal bonus depreciation of any kind was available for passenger automobiles placed into service on or after January 1, 2005 and before January 1, 2008.

The 280F limits published in 2003, 2004, 2005, 2006, 2007 and 2008 for trucks and vans are slightly higher than those for standard passenger automobiles due to the use of different inflation adjustments. An SUV built on a truck chassis is considered to be a truck or van for this purpose. See Rev Proc. 2008-22, 2008-12 IRB 658, §2, Paragraph 01, March 4, 2008; Rev. Proc. 2007-30, 2007-18 I.R.B. 1104, §2, Paragraph 01, April 13, 2007; Rev. Proc. 2006-18, 2006-12 I.R.B. 645 §2, Paragraph 01, March 16, 2006; Rev. Proc. 2005-13, 2005-12 I.R.B. 759, §2, Paragraph 01, March 21, 2005; Rev. Proc. 2004-20, 2004-13 I.R.B. 642, §2, Paragraph 01, March 29, 2004; Rev. Proc. 2003-75, 2003-2 C.B. 1018, §2, Paragraph 01, November 10, 2003. An SUV built on a car chassis will be subject to the limits applicable to standard passenger automobiles. The applicable 280F limit will depend on both the calendar year in which the taxpayer placed the vehicle in service and the number of taxable years the vehicle has been in use.

The applicable City SUV limits for tax years beginning in 2004, 2005, 2006, 2007 and 2008 are set forth in the attached New York City SUV Limitation Schedule (“Limitation Schedule”). For subsequent years, the Limitations Schedule will be updated. The updated Limitations Schedule will be available on the New York City Department of Finance website at <http://nyc.gov/finance>.

The Department of Finance has issued this Finance Memorandum for the purpose of advising taxpayers and tax professionals of, and explaining the Department's current position and procedures with respect to, the issue addressed so that they may act accordingly. Finance Memoranda are advisory in nature and are merely explanatory. Finance Memoranda are not declaratory rulings or rules of the Department of Finance and do not have legal force or effect, do not set precedent and are not binding on taxpayers.

NEW YORK CITY SUV LIMITATION SCHEDULE

TABLE 2004-A

Table 2004-A summarizes the City SUV limits for tax years beginning in **2004** for SUVs built on **truck chassis** placed in service in tax years beginning in **2000 through 2004**.

Tax Year of Use of SUV Beginning in 2004	SUV Placed in Service in Calendar Year	City SUV Limit for SUV that is Liberty Zone or Resurgence Zone Property	City SUV Limit on SUV that is not Liberty Zone or Resurgence Zone Property
First	2004 ¹	\$10,910	\$3,260
Second	2004	\$5,300	\$5,300
	2003 ²	\$5,400	\$5,400
Third	2003	\$3,250	\$3,250
	2002	\$2,950	\$2,950
Fourth	2002 ³	\$1,775	\$1,775
	2001 ⁴	\$1,775	\$1,775
Fifth	2001	\$1,775	\$1,775
	2000 ⁵	\$1,775	\$1,775

TABLE 2004-B

Table 2004-B summarizes the City SUV limits for tax years beginning in **2004** for SUVs built on **car chassis** placed in service in tax years beginning in **2000 through 2004**.

Tax Year of Use of SUV Beginning in 2004	SUV Placed in Service in Calendar Year	City SUV Limit for SUV that is Liberty Zone or Resurgence Zone Property	City SUV Limit on SUV that is not Liberty Zone or Resurgence Zone Property
First	2004	\$10,610	\$2,960
Second	2004	\$4,800	\$4,800
	2003	\$4,900	\$4,900
Third	2003	\$2,950	\$2,950
	2002	\$2,950	\$2,950
Fourth	2002	\$1,775	\$1,775
	2001	\$1,775	\$1,775
Fifth	2001	\$1,775	\$1,775
	2000	\$1,775	\$1,775

¹The City SUV limits for vehicles placed into service during the calendar year 2004 are derived from Rev. Proc. 2004-20, 2004-13 I.R.B. 642, March 29, 2004.

²The City SUV limits for vehicles placed into service during calendar year 2003 are derived from Rev. Proc. 2003-75, 2003-2 C.B. 1018, November 10, 2003.

³The City SUV limits for vehicles placed into service during the calendar year 2002 are derived from Rev. Proc. 2002-14, 2002-1 CB 450.

⁴The City SUV limits for vehicles placed into service during the calendar year 2001 are derived from Rev. Proc. 2001-19, 2001-1 CB 732, February 26, 2001.

⁵The City SUV limits for vehicles placed into service during the calendar year 2000 are derived from Rev. Proc. 2000-18, 2000-1 CB 722, Table 1, February 28, 2000. For SUVs placed into service in year before 2000, see the 280F limits applicable for the calendar year in which the SUV was placed into service as provided by the IRS in the applicable Revenue Procedure.

TABLE 2005-A

Table 2005-A summarizes the City SUV limits for tax years beginning in **2005** applicable to SUVs built on **truck chassis** placed in service in tax years beginning in **2001 through 2005**.

Tax Year of Use of SUV Beginning in 2005	SUV Placed in Service in Calendar Year	City SUV Limit on SUV For 2005
First	2005 ⁶	\$3,260
Second	2005	\$5,200
	2004	\$5,300
Third	2004	\$3,150
	2003	\$3,250
Fourth	2003	\$1,975
	2002	\$1,775
Fifth	2002	\$1,775
	2001	\$1,775

TABLE 2005-B

Table 2005-B summarizes the City SUV limits for tax years beginning in **2005** applicable to SUVs built on **car chassis** placed in service in tax years beginning in **2001 through 2005**.

Tax Year of Use of SUV Beginning in 2005	SUV Placed in Service in Calendar Year	City SUV Limit on SUV For 2005
First	2005	\$2,960
Second	2005	\$4,700
	2004	\$4,800
Third	2004	\$2,850
	2003	\$2,950
Fourth	2003	\$1,775
	2002	\$1,775
Fifth	2002	\$1,775
	2001	\$1,775

⁶The City SUV limits for vehicles placed into service during the calendar year 2005 are derived from Rev. Proc. 2005-13, 2005-12 I.R.B. 759, Table 2, March 21, 2005. For the years 2001 through 2004, the city SUV limits are derived from the same sources as noted in footnotes 1 through 5. For SUVs placed into service in the year 2000, use the amounts set forth for the fifth year in the Table 2004-A. For SUVs placed into service before 2000 see footnote 5.

TABLE 2006-A

Table 2006-A summarizes the City SUV limits for tax years beginning in **2006** for SUVs built on **truck chassis** placed in service in tax years beginning in **2002 through 2006**.

Tax Year of Use of SUV Beginning in 2006	SUV Placed in Service in Calendar Year	City SUV Limit on SUV For 2006
First	2006 ⁷	\$3,260
Second	2006	\$5,200
	2005	\$5,200
Third	2005	\$3,150
	2004	\$3,150
Fourth	2004	\$1,875
	2003	\$1,975
Fifth	2003	\$1,975
	2002	\$1,775

TABLE 2006-B

Table 2006-B summarizes the City SUV limits for tax years beginning in **2006** for SUVs built on **car chassis** placed in service in tax years beginning in **2002 through 2006**.

Tax Year of Use of SUV Beginning in 2006	SUV Placed in Service in Calendar Year	City SUV Limit on SUV For 2006
First	2006	\$2,960
Second	2006	\$4,800
	2005	\$4,700
Third	2005	\$2,850
	2004	\$2,850
Fourth	2004	\$1,675
	2003	\$1,775
Fifth	2003	\$1,775
	2002	\$1,775

⁷The City SUV limits for vehicles placed into service during the calendar year 2006 are derived from Rev. Proc. 2006-18, 2006-12 I.R.B. 645, Table 2, March 16, 2006. For the years 2002 through 2005, the city SUV limits are derived from the same sources as noted in footnotes 1 through 3 and footnote 6. For SUVs placed into service in the year 2001, use the amount set forth for the fifth year in Table 2005-A that is derived from the source noted in footnote 4. For SUVs placed into service in the year 2000, use the amount set forth for the fifth year in Table 2004-A that is derived from the source noted in footnote 5. For SUVs placed into service before 2000, see footnote 5.

TABLE 2007-A

Table 2007-A summarizes the City SUV limits for tax years beginning in 2007 for SUVs built on **truck chassis** placed in service in tax years beginning in **2003 through 2007**.

Tax Year of Use of SUV Beginning in 2007	SUV Placed in Service in Calendar Year	City SUV Limit on SUV For 2007
First	2007 ⁸	\$3,260
Second	2007	\$5,200
	2006	\$5,200
Third	2006	\$3,150
	2005	\$3,150
Fourth	2005	\$1,875
	2004	\$1,875
Fifth	2004	\$1,875
	2003	\$1,975

TABLE 2007-B

Table 2007-B summarizes the City SUV limits for tax years beginning in 2007 for SUVs built on **car chassis** placed in service in tax years beginning in **2003 through 2007**.

Tax Year of Use of SUV Beginning in 2007	SUV Placed in Service in Calendar Year	City SUV Limit on SUV For 2007
First	2007	\$3,060
Second	2007	\$4,900
	2006	\$4,800
Third	2006	\$2,850
	2005	\$2,850
Fourth	2005	\$1,675
	2004	\$1,675
Fifth	2004	\$1,675
	2003	\$1,775

⁸The City limits for vehicles placed into service beginning the calendar year 2007 are derived from Rev. Proc. 2007-30, 2007-18 I.R.B. 1104, Table 2, April 13, 2007. For the years 2003 through 2006, the city SUV limits are derived from the same sources as noted in footnotes 1 through 2 and footnotes 6 through 7. For SUVs placed into service in the year 2002 use the amount set forth for the fifth year in Table 2006-A that is derived from the source noted in footnote 3. For SUVs placed into service in the year 2001, use the amounts set forth for fifth year in Table 2005-A that is derived from the source noted in footnote 4. For SUVs placed into service in the year 2000, use the amount set forth for the fifth year in Table 2004-A that is derived from the source noted in footnote 5. For SUVs placed into service before 2000, see footnote 5.

TABLE 2008-A

The following Table 2008-A summarizes the City SUV limits for tax years beginning in 2008 applicable to SUVs built on **truck chassis** placed in service in tax years beginning in **2004 through 2008**.⁹

	SUV Placed in Service in Calendar Year	City SUV Limit on SUV for which Bonus Depreciation Is Allowed	City SUV Limit on SUV for which Bonus Depreciation Is Not Allowed
Tax year beginning in 2008 is first year of use of SUV	2008	\$11,160 ¹⁰	\$3,160
Tax year beginning in 2008 is second year of use of SUV	2008	\$5,100	\$5,100
	2007	\$5,200	\$5,200
Tax year beginning in 2008 is third year of use of SUV	2007	\$3,050	\$3,050
	2006	\$3,150	\$3,150
Tax year beginning in 2008 is fourth year of use of SUV	2006	\$1,875	\$1,875
	2005	\$1,875	\$1,875
Tax year beginning in 2008 is fifth year of use of SUV	2005	\$1,875	\$1,875
	2004	\$1,875	\$1,875

TABLE 2008-B

The following Table 2008-B summarizes the City SUV limits for tax years beginning in 2008 applicable to SUVs built on **car chassis** placed in service in tax years beginning in **2004 through 2008**.

	SUV Placed in Service in Calendar Year	City SUV Limit on SUV for which Bonus Depreciation Is Allowed	City SUV Limit on SUV for which Bonus Depreciation Is Not Allowed
Tax year beginning in 2008 is first year of use of SUV	2008	\$10,960	\$2,960
Tax year beginning in 2008 is second year of use of SUV	2008	\$4,800	\$4,800
	2007	\$4,900	\$4,900
Tax year beginning in 2008 is third year of use of SUV	2007	\$2,850	\$2,850
	2006	\$2,850	\$2,850
Tax year beginning in 2008 is fourth year of use of SUV	2006	\$1,775	\$1,775
	2005	\$1,675	\$1,675
Tax year beginning in 2008 is fifth year of use of SUV	2005	\$1,675	\$1,675
	2004	\$1,675	\$1,675

⁹This chart does not function differently from the charts for previous years. Column 1 was changed for clarity only.

¹⁰The City limits for vehicles placed into service beginning the calendar year 2008 are derived from Rev Proc. 2008-22, 2008-12 IRB 658, March 4, 2008. For the years 2004 through 2007, the city SUV limits are derived from the same sources as noted in footnote 1 and footnotes 6 through 8. For SUVs placed into service in the year 2003, use the amount set forth for the fifth year in Table 2007-A or Table 2007-B (if built on a car chassis) that is derived from the source noted in footnote 2. For SUVs placed into service in the year 2002 use the amount set forth for the fifth year in Table 2006-A that is derived from the source noted in footnote 3. For SUVs placed into service in the year 2001, use the amounts set forth for fifth year in Table 2005-A that is derived from the source noted in footnote 4. For SUVs placed into service in the year 2000, use the amount set forth for the fifth year in Table 2004-A that is derived from the source noted in footnote 5. For SUVs placed into service before 2000, see footnote 5.