



Ag Decision Maker



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IRS says amendments to regulations needed for late section 179 elections on amended returns after 2007*

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Although some commentators argued to the contrary, the Internal Revenue Service in a Revenue Procedure issued in late August of 2008 acknowledged that Section 179 elections could not be made on amended returns for taxable years beginning after December 31, 2007, without the

Commissioner's consent. The Revenue Procedure announced that amendments to the regulations would need to be made resolving the problem, provided guidance on the rules applicable to the 50 percent bonus depreciation for 2008 and provided further guidance on depreciation allowances claimable with respect to the Kansas Disaster Area Recovery Assistance Property and GO Zone property.

2008, a taxpayer was permitted to make an expense method depreciation election on an amended federal income tax return without the consent of the Commissioner. The amended return had to be filed within the time prescribed for filing an amended return for the taxable year. Confusion had arisen because the time to revoke an election had been extended to taxable years before 2011 without IRS consent, provided the period for filing the amended return had not expired.

Handbook updates

For those of you subscribing to the handbook, the following updates are included.

Commodity Programs for Crops – A1-32 (6 pages)

Pricing Forage in the Field – A1-65 (2 pages)

2008 Farm Bill Dairy Provisions – B1-55 (4 pages) **2007**

Iowa Farm Cost and Returns – C1-10 (14 pages)

Farmland Value Survey (Realtors Land Institute) – C2-75 (2 pages)

Please add these files to your handbook and remove the out-of-date material.

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The amended return election issue

The permanent rule for elections to claim expense method depreciation for many years has been that elections had to be made on the original income tax return for the year the property was placed in service (whether or not the return was timely) or on an amended return but only if filed within the time for filing a return (including extensions) for the taxable year. For taxable years beginning after 2002 and before

The statute has always been clear on the authority to revoke without the Commissioner's consent –

“Any elections made under this section, and any specification contained in such election, may not be revoked except with the consent of the Secretary. Any such election or specification with respect to any taxable year beginning after 2002 and before 2011 may be revoked

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by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.”

The problem was that the statute was amended in 2006 to extend the period for revocations to be made on an amended return before 2010 but that legislation did not extend the period for making elections on an amended return. The statute was amended again in 2007 to extend the date to “before 2011” for revocations without the Commissioner’s consent, but again without extending the period for making elections.

Earlier attempt at a solution

Inasmuch as the statute states that “. . . elections shall be made in such manner as the Secretary may by regulations prescribe, any solution short of a statutory amendment had to come in the form of an amendment to the regulations (which is clearly within the authority of the Department of the Treasury). The Treasury had made an attempt to solve the problem in T.D. 9307 on December 26, 2006, by stating – “For a taxable year beginning after 2002 and before 2010, a taxpayer may make a section 179 election by filing an amended return.”

The problem with that pronouncement was that the statement quoted above appeared in the “Explanation of Provisions” section of the Treasury Decision (and apparently was in response to a question raised in the hearing on the T.D.) and the Treasury Decision did not amend the relevant regulations.

The latest IRS signal that a solution is coming

In Rev. Proc. 2008-54, the Internal Revenue Service announced that the Department of the Treasury intended to amend the regulations to permit taxpayers to make an election to claim expense method depreciation without the consent of the Commissioner for taxable years beginning after 2007 and “. . . beginning before the last year provided in section 179(c)(2) for revoking an election.” That seems to state that the authority would run through a year before the end of 2010 inasmuch as the statute states that the authority to revoke without consent is effective for taxable years beginning “before 2011.”

That language poses two problems –

- (1) as worded, the authority to make an election without the Commissioner’s consent would necessarily end on December 31, 2009 for calendar year taxpayers, yet the authority to revoke without consent would run through December 31, 2010 for calendar year taxpayers;
(2) the Department of the Treasury has not yet acted to amend the regulations. All we have is their agency (IRS) stating that its parent organization intended to make such an amendment.

While that appears likely, the problem is not yet totally laid to rest.

Are energy prices threatening the farm boom?

By Jason Henderson, Vice President and Omaha Branch Executive, Federal Reserve Bank of Kansas City

This year’s farm incomes are expected to reach their highest levels in more than three decades. Profits have soared with record crop prices, strong export demand, the booming ethanol industry, and tightening global supplies. The robust profit opportunities for crop producers have more than offset losses for livestock producers.

Energy prices, meanwhile, continue to march higher. While slackening from the record highs posted in July, they still threaten profit margins for crop producers—despite the record crop prices.

This article examines the links between today’s high energy prices, crop profits, and farm credit conditions. After tracking rising energy prices and farm input costs, the article explores how the unexpected surge in farm input costs has eroded crop profits, dampened farm income expectations, and softened farm credit conditions. Ultimately, soaring energy prices threaten to slow the booming farm economy.

Energy and farm input costs surge

World energy prices began their recent surge in 2007 amid robust global demand and limited supply gains. While developed countries have curbed their crude oil consumption since 2005, developing countries have sharply increased their consumption. According to the Energy Information Administration, China’s appetite for crude oil has grown roughly 50 percent since 2001, accounting for about a third of the world’s increase in oil consumption.

At the same time, the world’s crude oil production has lagged expectations. With OPEC countries operating at extremely high capacity levels, much of the world’s oil reserves are located in non-OPEC countries, which have not met crude oil production expectations. In fact, world crude oil production was flat in 2007, falling behind world consumption. As a result, both crude oil and natural gas prices have set record highs (Chart 1).