

Rev. Proc. 97-10

SECTION 1. PURPOSE

This revenue procedure provides the exclusive procedure for making the election under § 1120 of the Small Business Job Protection Act of 1996 (the Act) to treat a retail motor fuels outlet placed in service before August 20, 1996, as 15-year property under § 168 of the Internal Revenue Code. The election set forth in this revenue procedure is available only for the taxpayer's taxable year that includes August 20, 1996, the date of enactment of the Act.

SECTION 2. BACKGROUND

.01 Section 1120 of the Act amended § 168(e)(3)(E) to provide that 15-year property includes any § 1250 property that is a retail motor fuels outlet whether or not food or other convenience items are sold at the outlet. The legislative history of the Act provides that property will qualify as a retail motor fuels outlet if 50 percent or more of the gross revenues generated from the property are derived from petroleum sales, or 50 percent or more of the floor space in the property is devoted to petroleum marketing sales. A motor fuels outlet of 1400 square feet or less qualifies as a retail motor fuels outlet under the Act without application of either 50 percent test. If the property

initially meets (or fails to meet) the 50-percent test but subsequently fails to meet (or meets) the test for more than a temporary period, such failure (or qualification) is treated as a change in the use of property to which § 168(i)(5) applies. S. Rep. No. 281, 104th Cong., 2nd Sess. 14-16 (1996).

Section 1120 of the Act also amended § 168(g)(3)(B) to provide that the recovery period for a retail motor fuels outlet is 20 years under the alternative depreciation system of § 168(g).

.02 Section 1120 of the Act applies to property depreciable under § 168 that is placed in service on or after August 20, 1996. Section 1120 of the Act also provides that a taxpayer may elect, in the form and manner prescribed by the Secretary of the Treasury, to apply § 1120 to property depreciable under § 168 that was placed in service before August 20, 1996. The legislative history of the Act provides that the Secretary may treat the election as a change in the taxpayer's method of accounting for the property and provide rules similar to those provided in Rev. Proc. 96-31, 1996-1 C.B. 714. The legislative history further provides that if a taxpayer has already treated the property as 15-year property the taxpayer will be deemed to have made the election for that property.

.03 For certain changes in methods of accounting for depreciation, Rev. Proc. 96-31 provides an automatic, prospective method change under which the § 481(a) adjustment is taken into account in computing the taxable income in the year of change.

.04 Except as otherwise expressly provided, a taxpayer must obtain the consent of the Commissioner of Internal Revenue to change a method of accounting for federal income tax purposes. To obtain this consent, a Form 3115, Application for Change in Accounting Method, generally must be filed within 180 days after the beginning of the taxable year in which the proposed change is to be made. Section 446(e) and § 1.446-1(e)(2)(i) and (3)(i) of the Income Tax Regulations.

.05 The Commissioner is authorized to prescribe administrative procedures setting forth the limitations, terms, and conditions the Commissioner deems necessary to obtain consent for effecting a change in method of accounting and to prevent amounts from being duplicated or omitted, including the taxable year or years in which the § 481(a) adjustment is to be taken into account. Section 1.446-1(e)(3)(ii).

.06 In computing taxable income, § 481(a) requires a taxpayer to take into account those adjustments necessary to prevent amounts from being duplicated or omitted when the taxpayer's taxable income is computed under a method of accounting different from the method used to compute taxable income for the preceding taxable year.

SECTION 3. SCOPE

.01 Except as otherwise provided in section 3.02 of this revenue procedure, this revenue procedure applies to § 1250 property that: (1) qualifies as a retail motor fuels outlet as described in

section 2.01 of this revenue procedure; (2) is depreciable under § 168; (3) was placed in service before August 20, 1996; and (4) was not treated as 15-year property under § 168 in all taxable years since the property was placed in service or, if the property changed its use from or to a retail motor fuels outlet, in all taxable years in which the property was a retail motor fuels outlet.

.02 This revenue procedure does not apply to: (1) any property depreciable under § 168 prior to its amendment by the Tax Reform Act of 1986; or (2) any property for which the taxpayer will be deemed to have made the retail motor fuels outlet election. A taxpayer will be deemed to have made this election for: (i) property placed in service before the year of change (as defined in section 5.02 of this revenue procedure) that was treated as 15-year property under § 168 in all taxable years since the property was placed in service or, if the property changed its use from or to a retail motor fuels outlet, in all taxable years in which the property was a retail motor fuels outlet; and (ii) property placed in service during the year of change (or the immediately preceding taxable year) but before August 20, 1996, that was or will be treated as 15-year property under § 168 on the taxpayer's original tax return for the year of change (or the immediately preceding taxable year).

SECTION 4. RETAIL MOTOR FUELS OUTLET ELECTION

.01 *In general.* A taxpayer may elect to treat § 1250 property within the scope of this revenue procedure as 15-year property for § 168 purposes. This election may be made separately for each property and, once made, is irrevocable.

.02 *Effect of election.* If a taxpayer makes the retail motor fuels outlet election, the taxpayer must change to a permissible depreciation method, recovery period, and convention under § 168 for the property. Under the general depreciation system of § 168(a), 15-year property generally is depreciated by using the 150-percent declining balance method of depreciation and a 15-year recovery period. Under the alternative depreciation system of § 168(g), a retail motor fuels outlet is depreciated by using the straight-line method of depreciation and a 20-year recovery period. Under both depreciation systems, the convention is the half-year convention unless the mid-quarter convention ap-

plies. The retail motor fuels outlet election does not revoke any elections previously made by the taxpayer under § 168 or enable the taxpayer to make a late election to use the straight-line method or the alternative depreciation system. However, if the taxpayer has no other 15-year property (as defined under §§ 168(e)(1) and 168(e)(3)(E)(i) and (ii)) that was placed in service during the same taxable year as the retail motor fuels outlet, the taxpayer may elect to use the straight-line method or the alternative depreciation system for the retail motor fuels outlet.

The retail motor fuels outlet election also requires the taxpayer to use a 20-year recovery period and the straight-line method for the property for alternative minimum tax purposes. See § 168(g)(3)(B).

SECTION 5. CHANGE IN METHOD OF ACCOUNTING

.01 *Consent.* The retail motor fuels outlet election for any property within the scope of this revenue procedure is a change in method of accounting. Under § 1.446-1(e)(2)(i), the consent of the Commissioner is hereby granted to taxpayers to make this method change for § 1250 property within the scope of this revenue procedure. This consent is granted for the taxpayer's year of change. The consent is conditioned, however, on the taxpayer's complying with this section and section 4 of this revenue procedure. If the taxpayer does not comply with these sections, the taxpayer will be deemed to have initiated a change in method of accounting without obtaining the consent of the Commissioner required under § 446(e).

.02 *Year of change.* The year of change is the taxpayer's taxable year that includes August 20, 1996, the date of enactment of the Act.

.03 *Section 481(a) adjustment.*

(1) *Amount of § 481(a) adjustment.* The § 481(a) adjustment may be a positive § 481(a) adjustment (increase in taxable income) or negative § 481(a) adjustment (decrease in taxable income). The adjustment equals the difference between the total amount of depreciation taken into account in computing taxable income for the property under the taxpayer's present method of accounting, and the total amount of depreciation allowable for the property under the taxpayer's proposed method of accounting, for any taxable year prior to the year of change. However, if the taxpay-

er's property underwent a change in use as described in section 2.01 of this revenue procedure, the § 481(a) adjustment must only take into account those taxable years the property qualified as a retail motor fuels outlet.

(2) *Section 481(a) adjustment period.* In computing taxable income, a taxpayer must take into account (a) the entire net negative § 481(a) adjustment in the year of change, or (b) any net positive § 481(a) adjustment ratably over 3 years, beginning with the year of change.

(3) *Alternative minimum tax.* The amounts of the § 481(a) adjustments for regular tax and alternative minimum tax purposes may differ. The § 481(a) adjustment relating to the alternative minimum taxable income will be included in the computation of the alternative minimum taxable income over the same § 481(a) adjustment period applicable under section 5.03(2) of this revenue procedure. The difference between the two § 481(a) adjustments will require an adjustment to taxable income in order to arrive at alternative minimum taxable income. See Form 6251 (Alternative Minimum Tax—Individuals) and Form 4626 (Alternative Minimum Tax—Corporations).

.04 *Manner of making method change.*

(1) *Complete and file a current Form 3115.* The retail motor fuels outlet election is made on the taxpayer's timely filed (including extensions) original federal income tax return for the year of change or on an amended return for the year of change filed no later than

* . The election is made by attaching a completed, current Form 3115 to the taxpayer's original or amended return for the year of change. The requirement to file a Form 3115 within 180 days after the beginning of the year of change is waived in accordance with § 1.446-1(e)(3)(ii). In addition, a copy of the Form 3115 must be filed with the national office no later than when the original Form 3115 is filed with the federal income tax return or the amended return. The copy should be sent to the Commissioner of Internal Revenue, Attention: Office of Assistant Chief Counsel (Passthroughs and Special Industries) CC:DOM:P&SI, P.O. Box 7604, Benjamin Franklin Station, Washington, D.C. 20024.

* Insert the date that is 180 days after the publication of this revenue procedure.

If more than one member of a consolidated group is making the retail motor fuels outlet election, the parent corporation may file a single Form 3115 on behalf of the members of the consolidated group making the election in accordance with Rev. Proc. 92-90, 1992-2 C.B. 501 (or any successor). See section 5.02 of Rev. Proc. 92-90 for the information required to be submitted with the Form 3115.

In completing the current Form 3115 (Rev. February 1996), the taxpayer must complete Schedule D, Part II, Change in Depreciation or Amortization (page 7 of the Form 3115), and any other applicable schedule. With respect to Parts I through III on pages 1 and 2 of the Form 3115 the taxpayer must provide only the information requested on the following lines:

(a) Part I, Eligibility To Request Change (page 1)-lines 1, 2a, 2b, 3a, 4a, 5a, and 6;

(b) Part II, Description of Change (page 2)-lines 7, 8, and 10; and

(c) Part III, Section 481(a) Adjustment (page 2)-lines 20, 22, 23, and 25. Include on line 20 the amounts of the § 481(a) adjustments for regular tax and alternative minimum tax purposes. The taxpayer does not have to complete Part IV, Additional Information (page 3).

(2) *No user fee.* No user fee is required for a Form 3115 filed under this revenue procedure.

.05 *Basis adjustment.* As of the beginning of the year of change, the basis of the property for which the retail motor fuels outlet election is made must reflect the reductions required by § 1016(a)(2) for the depreciation allowable for the property (as determined under the taxpayer's proposed method of accounting) for all open and closed years prior to the year of change.

.06 *Protection from examination changes.*

(1) *In general.* If a taxpayer timely files a completed Form 3115 to change its method of accounting in the manner

described in this revenue procedure and otherwise complies with the provisions of this revenue procedure, the district director may not propose that the taxpayer change the same method of accounting as that changed by the taxpayer under this revenue procedure for a year prior to the year of change prescribed in this revenue procedure. The district director, however, may verify the facts underlying the method change, including whether the property qualifies as a retail motor fuels outlet, the amounts of the regular tax and alternative minimum tax § 481(a) adjustments, the § 481(a) adjustment period, and the § 1016(a)(2) adjustment to the basis of the property.

(2) *Taxpayer under examination, before an appeals office, or before a federal court.* If a change in method of accounting under this revenue procedure results in a positive § 481(a) adjustment for an item of property, a taxpayer does not receive the protection from examination changes described in section 5.06(1) of this revenue procedure for that property if, on **, the method of accounting is an issue:

(a) under consideration with respect to an examination of the taxpayer's federal income tax return for any taxable year. The issue is under consideration if the taxpayer has received written notification from the examining agent(s) (e.g., by examination plan, information document request, notification of proposed adjustments or income tax examination changes) specifically citing the method of accounting as an issue under consideration for the taxable year(s) under examination;

(b) before an appeals office of the Internal Revenue Service with respect to an examination of the taxpayer's federal income tax return for any taxable year; or

(c) before a federal court.

** Insert the date of publication of this revenue procedure.

SECTION 6. EFFECTIVE DATE

.01 *In general.* This revenue procedure is effective for a taxpayer's taxable year that includes August 20, 1996, the date of enactment of the Act.

.02 *Form 3115 pending with the Service.* Because this revenue procedure provides the exclusive procedure for making the retail motor fuels outlet election, the national office will return any Form 3115 filed with the national office under Rev. Proc. 92-20, 1992-1 C.B. 685, or Rev. Proc. 96-31 for a change in method of accounting within the scope of this revenue procedure. A taxpayer that has timely filed a Form 3115 with the national office prior to the publication date of this revenue procedure must use this revenue procedure and will be so notified to this effect by the national office. If all of the property subject to the Form 3115 appears to be within the scope of this revenue procedure, any user fee submitted with the Form 3115 will be returned to the taxpayer.

.03 *Claim for refund pending with the Service.* Because this revenue procedure provides the exclusive procedure for making the retail motor fuels outlet election provided by § 1120 of the Act, the Service will deny any claim for refund that is filed to make this election, except for any amended return filed under section 5.04(1) of this revenue procedure.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 92-20, 1992-1 C.B. 685, is modified.

DRAFTING INFORMATION

The principal author of this revenue procedure is Mark Pitzer of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mark Pitzer at (202) 622-3110 (not a toll-free call).