

Expansion of Notice 2001-70 — Additional Disaster Relief for Taxpayers Following the September 11, 2001, Terrorist Attack — Mid- Quarter Convention Relief

Notice 2001-74

This notice supplements the tax relief granted in Notice 2001-70 (2001-45 I.R.B. 437) published November 5, 2001, by expanding the class of taxpayers entitled to the relief and clarifying the

instructions for making the election provided under Notice 2001-70.

In Notice 2001-70, the Treasury Department and the Internal Revenue Service announced their intention to issue regulations permitting taxpayers to elect not to apply the mid-quarter convention rules contained in § 168(d)(3) of the Internal Revenue Code to certain property placed in service in the taxable year that includes September 11, 2001, if the third quarter of the taxpayer's 2001 taxable year includes September 11, 2001. Notice 2001-70 also provided that an eligible taxpayer that wishes to make the election must write "Election Pursuant to Notice 2001-70" across the top of the taxpayer's Form 4562, *Depreciation and Amortization*, for the taxpayer's taxable year that includes September 11, 2001.

Section 168(d)(3) generally provides that, except as provided in regulations, if the aggregate basis of property placed in service during the last three months of the taxable year exceeds 40 percent of the aggregate basis of property (other than property described in § 168(d)(3)(B)) placed in service during the taxable year, the applicable depreciation convention for all property (other than property described in § 168(d)(2)) to which § 168 applies placed in service during the taxable year is the mid-quarter convention.

Treasury and the Service have been made aware that certain taxpayers that are not entitled to relief under Notice 2001-70 because the third quarter of their 2001 taxable year does not include September 11, 2001, are purchasing property to replace property destroyed in the September 11, 2001, terrorist attack. As a result of these purchases, some of these taxpayers would be required to apply the mid-quarter convention. Such a result may place these taxpayers at a competitive disadvantage because other similarly situated taxpayers have received relief under Notice 2001-70.

Accordingly, Notice 2001-70 is expanded to provide that if the fourth quarter of a taxpayer's taxable year includes September 11, 2001, then the taxpayer may elect, for purposes of § 168(d), to apply the half-year convention to all property (other than property described in § 168(d)(2)) placed in service during the taxpayer's taxable year that includes September 11, 2001. The

election is made in the same manner provided in Notice 2001-70.

In addition, certain taxpayers are required to file Form 2106, *Employee Business Expenses*, rather than Form 4562, *Depreciation and Amortization*, to report certain depreciation expenses. Accordingly, these taxpayers may make the election provided under Notice 2001-70, as supplemented by this notice, by writing "Election Pursuant to Notice 2001-70" across the top of the taxpayer's Form 2106. Taxpayers filing their returns electronically may make the election provided under Notice 2001-70, as supplemented by this notice, by typing "Election Pursuant to Notice 2001-70" in the Election Explanation (ELC) record when filing the Form 4562 or Form 2106.

Treasury and the Service intend to amend the regulations under § 168 to incorporate the guidance set forth in this notice. Until the regulations are amended, taxpayers may rely on the guidance set forth in this notice.

The principal author of this notice is Bernard P. Harvey of the Office of Associate Chief Counsel, Passthroughs and Special Industries. For further information regarding this notice, contact Mr. Harvey at (202) 622-3110 (not a toll-free call).