2015

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

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Recommended Citation
Harl, Neil E. (2015) "IRS says amendments to regulations needed for late section 179 elections on amended returns after 2007," Ag Decision Maker Newsletter: Vol. 13 : Iss. 1 , Article 1. Available at: http://lib.dr.iastate.edu/agdm/vol13/iss1/1

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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)

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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 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.

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 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.

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 stat-
ute 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 an-
nounced 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 begin-
ning “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 taxpay-
ers;
(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 sup-
plies. 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 track-
ing 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 en-
ergy 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 consump-
tion 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 produc-
tion was flat in 2007, falling behind world consumption. As
a result, both crude oil and natural gas prices have set record
higns (Chart 1).