

BONUS DEPRECIATION AND ENHANCED SECTION 179 EXPENSE DEDUCTIONS

Issue:

Can corporations that improperly modified the basis of an asset for Nebraska purposes because a portion of the bonus depreciation deduction or enhanced Section 179 expense deduction claimed on their federal returns was required to be added back, deduct the amount of bonus depreciation or enhanced Section 179 expense previously added back?

Conclusion:

Any corporation which modified the basis of an asset due to the bonus depreciation or enhanced Section 179 expense deduction added back, and calculated its standard depreciation expense for Nebraska on such modified basis, will not be allowed to take the deduction (20% per year over a five tax year period) of the bonus depreciation or enhanced Section 179 expense previously added back.

Analysis:

For tax years 2000 through 2005, corporate taxpayers are required by Neb. Rev. Stat. §77-2716(9) to increase federal taxable income by eighty-five percent of any bonus depreciation claimed on their federal income tax returns. For bonus depreciation added back in tax years 2000 through 2002, twenty percent of the total amount previously added back may be subtracted in the first taxable year beginning on or after January 1, 2005, and twenty percent in each of the following four tax years. For bonus depreciation added back in tax years 2003 through 2005, twenty percent of the total amount previously added back may be subtracted in the first taxable year beginning on or after January 1, 2006, and twenty percent in each of the following four tax years.

For tax years 2003 through 2005, corporate taxpayers are required by Neb. Rev. Stat. §77-2716(10) to increase federal taxable income by the amount of the enhanced Section 179 expense deduction claimed on their federal income tax return. Twenty percent of the total enhanced Section 179 expense deduction previously added back may be subtracted in the first taxable year beginning on or after January 1, 2006, and twenty percent in each of the following four tax years.

Since the amount added back is allowed as a deduction in later tax years, no Nebraska adjustments should have been made to an asset's basis, the depreciation allowed (other than bonus depreciation or enhanced Section 179 expense), or the gain or loss on the disposition of the asset.

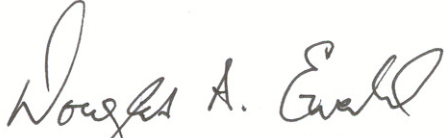
The use of such a modified depreciation method for Nebraska results in recovering part of the bonus depreciation or enhanced Section 179 expense added back in each year of the life of the

asset beginning in the year the asset was placed in service. Allowing an additional twenty percent deduction for the tax years in the “recovery period” would allow the taxpayer to claim the same deduction twice and result in an unintended windfall for the taxpayer.

Therefore, corporations which modified the Nebraska basis of an asset due to the bonus depreciation or enhanced Section 179 expense deduction must continue to calculate their Nebraska depreciation expense using such method until the asset is fully depreciated or the asset is disposed of. If the asset is disposed of prior to being fully depreciated on the modified Nebraska depreciation schedule, the federal gain or loss realized on such disposal must also be modified for Nebraska purposes. Documentation must be attached to the Nebraska corporate return supporting any adjustment to its federal depreciation expense or its federal gain or loss on the sale of the asset.

The above provisions also apply to individuals and fiduciaries. The provisions of Revenue Ruling 24-06-1 are superseded by this Revenue Ruling.

APPROVED:

A handwritten signature in cursive script that reads "Douglas A. Ewald". The signature is written in dark ink and is positioned above the printed name and title.

Douglas A. Ewald
Tax Commissioner

October 6, 2008