

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

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(1)I Income Tax  
(1)C Corporation Tax  
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**New York Depreciation Deduction for Property  
Placed in Service Outside New York State  
in Tax Years 1985-1993**

As a result of a recent court decision, the rules for determining the amount of New York depreciation allowed for certain property placed in service outside New York State have changed. The new rules, explained below, apply to the personal income tax (Article 22), the business corporation franchise tax (Article 9-A), the franchise tax on banking corporations (Article 32), and the franchise taxes on insurance corporations (Article 33).

For property placed in service outside New York State for tax years beginning after 1984 but before 1994 (subject property), New York State did not allow the Accelerated Cost Recovery System (ACRS) or modified ACRS (MACRS) depreciation deduction determined under section 168 of the Internal Revenue Code (IRC). Instead, New York State allowed the depreciation deduction that would have been allowed under IRC section 167 as it was in effect on December 31, 1980. The city of New York has the same provision for purposes of the New York City corporation tax.

However, the New York State Supreme Court, Appellate Division, in R.J. Reynolds Tobacco Co. v City of New York Department of Finance, 667 N.Y.S.2d 4 (December 9, 1997), held that the New York City provision is unconstitutional, because it violates the Commerce Clause of the United States Constitution by discriminating against owners of out-of-state property. New York State will follow this decision. Accordingly, taxpayers will now be allowed to claim the same depreciation as was claimed on the federal tax return for property placed in service outside New York State in tax years 1985 through 1993.

However, the Tax Department realizes that it may be burdensome or unfair to require all taxpayers to switch to IRC section 168 depreciation for the subject property. Therefore, the Tax Department will allow taxpayers, at their option, to continue to use the IRC section 167 depreciation deduction, or to switch to the IRC section 168 depreciation deduction. The deduction chosen by the taxpayer, however, must be used on all subject property owned by the taxpayer. The rules for choosing IRC section 168 depreciation or staying with IRC section 167 depreciation are as follows.

**IRC Section 168 Depreciation**

A taxpayer chooses to switch to the IRC section 168 depreciation deduction by either claiming the deduction (that is, by not making the New York depreciation addition and subtraction

**uncoupling** modifications for the subject property) on an original return filed for a tax year, or by filing an amended return claiming the IRC section 168 depreciation deduction for a prior year. However, an amended return can be filed only for a prior year that is open under the statute of limitations.

A taxpayer has the option to switch to IRC section 168 depreciation at any time. However, once a taxpayer switches to IRC section 168 depreciation for the subject property, the taxpayer must use the IRC section 168 depreciation deduction from that taxable year forward. For example, a taxpayer who chooses to switch to IRC section 168 depreciation in the year 2000 must use that method for all subsequent years. Similarly, if in 1999 a taxpayer chooses to file an amended return for 1996 and claim a refund resulting from the switch to IRC section 168 depreciation, the taxpayer must apply IRC section 168 depreciation to all tax years after 1996, even if the application results in an additional tax due for one or more of those years.

Upon the sale or disposition of the property, the taxpayer must make the applicable depreciation addition or subtraction **catch-up** modification to bring the New York depreciation deduction on the property to the federal depreciation amount. (See Tax Law, §§ 208.9(a)(12), (b)(11); 612(b)(27), (c)(28); 1453(b)(10), (e)(8); 1503(b)(1)(I), (2)(N).)

### **IRC Section 167 Depreciation**

A taxpayer who chooses to continue using the IRC section 167 depreciation on the subject property does so by making the applicable New York depreciation addition or subtraction **uncoupling** modifications on the taxpayer's New York tax returns. The taxpayer must continue to make those modifications until the taxpayer chooses (if ever) to switch to IRC section 168 depreciation.

Upon the sale or disposition of the property, the taxpayer must make the applicable depreciation addition or subtraction **catch-up** modification to bring the New York depreciation deduction on the property to the federal depreciation amount. (See Tax Law, §§ 208.9(a)(12), (b)(11); 612(b)(27), (c)(28); 1453(b)(10), (e)(8); 1503(b)(1)(I), (2)(N).)