Part III – Administrative, Procedural, and Miscellaneous

GO Zone Bonus Depreciation

Notice 2006-77

SECTION 1. PURPOSE

This notice re-publishes Notice 2006-67, 2006-33 I.R.B. 248, to reflect the citations to the final regulations for the additional first year depreciation deduction provided by § 168(k) of the Internal Revenue Code that are published in the Federal Register on August 31, 2006 (71 FR 51727). Notice 2006-67 provided guidance with respect to the 50-percent additional first year depreciation deduction provided by § 1400N(d) (GO Zone additional first year depreciation deduction) for qualified Gulf Opportunity Zone property (GO Zone property). This notice provides that same guidance.

SECTION 2. BACKGROUND AND GO ZONE PROPERTY

.01 Section 1400N(d), added by section 101 of the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135, 119 Stat. 2577, generally allows a 50-percent additional first year depreciation deduction for GO Zone property. The GO Zone additional first year depreciation deduction is allowable in the taxable year in which the GO Zone property is placed in service by the taxpayer. The computation of the allowable GO Zone additional first year depreciation deduction and the otherwise allowable depreciation deduction for GO Zone property is made in accordance with rules similar to the rules for

50-percent bonus depreciation property in § 1.168(k)-1(d)(1)(i), (1)(iii), and (2) of the Income Tax Regulations.

.02 GO Zone property is depreciable property that meets all of the following requirements:

(1) Property that is described in § 168(k)(2)(A)(i) and § 1.168(k)-1(b)(2)(i), or property that is nonresidential real property (as defined in § 168(e)(2)(B)) or residential rental property (as defined in § 168(e)(2)(A)) and depreciated under § 168;

(2) Substantially all of the use of the property is in the Gulf Opportunity (GO) Zone (as defined in § 1400M(1)) and in the active conduct of a trade or business by the taxpayer in the GO Zone (for further guidance, see section 3 of this notice);

(3) The original use of the property commences with the taxpayer in the GO Zone on or after August 28, 2005. For purposes of this section 2.02(3), rules similar to the original use rules in § 1.168(k)-1(b)(3) apply. In addition, used property will satisfy the original use requirement so long as the property has not been previously used within the GO Zone;

(4) The property is acquired by the taxpayer by purchase (as defined in § 179(d) and § 1.179-4(c)) on or after August 28, 2005, but only if no written binding contract for the acquisition of the property was in effect before August 28, 2005. For purposes of this section 2.02(4), the rules in § 1.168(k)-1(b)(4)(ii) (binding contract), rules similar to the rules in § 168(k)(2)(E)(i) and § 1.168(k)-1(b)(4)(iii) (self-constructed property), and rules similar to the rules in § 168(k)(2)(E)(iv) and § 1.168(k)-1(b)(4)(iv) (disqualified transactions) apply; and

(5) The property is placed in service by the taxpayer on or before December 31, 2007 (December 31, 2008, in the case of qualified nonresidential real property and residential rental property).

.03 Depreciable property is not eligible for the GO Zone additional first year depreciation deduction if:

(1) The property is described in § 168(k)(2)(D)(i) and § 1.168(k)-1(b)(2)(ii)(A)(2);

(2) The property is described in § 168(f);

(3) Any portion of the property is financed with the proceeds of any obligation the interest on which is tax-exempt under § 103;

(4) The property is a qualified revitalization building (as defined in § 1400I(b)) for which the taxpayer has made an election under § 1400I(a)(1) or (a)(2) in accordance with section 7 of Rev. Proc. 2003-38 (2003-1 C.B. 1017);

(5) The property is included in any class of property for which the taxpayer elects not to deduct the GO Zone additional first year depreciation (for further guidance, see section 4 of this notice);

(6) The property is described in § 1400N(p)(3) (for further guidance, see section 5 of this notice);

(7) The property is placed in service and disposed of during the same taxable year. However, rules similar to the rules in § 1.168(k)-1(f)(1)(ii) and (iii) (technical termination of a partnership under § 708(b)(1)(B) or transactions described in § 168(i)(7)) apply; or

(8) The property is converted from business or income-producing use to personal use in the same taxable year in which the property is placed in service by a taxpayer.

.04 The counties and parishes in Alabama, Louisiana, and Mississippi that comprise the GO Zone are listed on page 2 of IRS Publication 4492, Information for Taxpayers Affected by Hurricanes Katrina, Rita, and Wilma, under Gulf Opportunity (GO) Zone (Core Disaster Area).

.05 If depreciable property is not GO Zone property in the taxable year in which the property is placed in service by the taxpayer, the GO Zone additional first year depreciation deduction is not allowable for the property even if a change in use of the property subsequent to the placed-in-service year of the property results in the property being GO Zone property. See § 1.168(k)-1(f)(6)(iv)(B).

.06 Limitation provisions of the Code (for example, §§ 465, 469, and 704(d)) apply and may limit the amount of the GO Zone additional first year depreciation deduction that may be claimed by a taxpayer subject to such a provision.

SECTION 3. SUBSTANTIALLY ALL AND ACTIVE CONDUCT REQUIREMENTS UNDER § 1400N(d)(2)(A)(ii)

.01 Substantially All Requirement. Each depreciable property will meet the requirements of § 1400N(d)(2)(A)(ii) if substantially all of the use of the property is in the GO Zone and in the active conduct of a trade of business by the taxpayer in the GO Zone. For this purpose, the term “substantially all” means 80 percent or more during each taxable year. If greater than 20 percent of the use of the property either is outside the counties and parishes designated as being part of the GO Zone or is not in the

active conduct of a trade or business by the taxpayer in the GO Zone, then the property is not GO Zone property and is not eligible for the GO Zone additional first year depreciation deduction.

The following example illustrates the provisions of this section 3.01 and section 2.05 of this notice.

Example. A, a calendar-year taxpayer, owns and operates a furniture store in the GO Zone. In December 2006, A purchases a new delivery truck and places it in service for use in A's business. The delivery truck is used less than 80 percent in the GO Zone in 2006 and is used 80 percent or more in the GO Zone in 2007 and 2008. Because the delivery truck does not meet the substantially all requirement described in this section 3.01 in its placed-in-service year (2006), the truck is not GO Zone property. Thus, the truck does not qualify for the GO Zone additional first year depreciation deduction, regardless of the fact that substantially all of the use of the truck is in the GO Zone in 2007 and 2008.

.02 Active Conduct of a Trade or Business Requirement.

(1) Trade or business definition. For purposes of § 1400N(d)(2)(A)(ii), the term "trade or business" has the same meaning as in § 162 and the regulations thereunder. Thus, property held merely for the production of income or used in an activity not engaged in for profit (as described in § 183) does not qualify for the GO Zone additional first year depreciation deduction.

(2) Active conduct. Solely for purposes of § 1400N(d)(2)(A)(ii), the determination of whether a trade or business is actively conducted by the taxpayer is to be made based on all of the facts and circumstances. A taxpayer generally is

considered to actively conduct a trade or business if the taxpayer meaningfully participates in the management or operations of the trade or business. Furthermore, for purposes of § 1400N(d)(2)(A)(ii), a partner, member, or shareholder of a partnership, limited liability company, or S corporation, respectively, is considered to actively conduct a trade or business of the partnership, limited liability company, or S corporation if the partnership, limited liability company, or S corporation meaningfully participates (through the activities performed by itself, or by others on behalf of the partnership, limited liability company, or S corporation, respectively) in the management or operations of the trade or business. Similar rules apply to other pass-thru entities such as trusts or estates.

(3) Examples. The following examples illustrate the provisions of section 3.02 of this notice.

(a) Example 1. During 2006, MNO, a limited liability company, constructs and places in service a new apartment building in the GO Zone. MNO is treated as a partnership for federal tax purposes. B, a member in MNO, manages and operates this apartment building for MNO. Because B manages and operates the apartment building for MNO, MNO meaningfully participates in the management and operations of the apartment building. Consequently, all of the use of the apartment building is in the GO Zone and in the active conduct of a trade or business by MNO in the GO Zone. Accordingly, the unadjusted depreciable basis (as defined in § 1.168(b)-1T(a)(3)) of the apartment building qualifies for the GO Zone additional first year depreciation deduction (assuming all other requirements are met). However, limitation provisions of the Code

(for example, § 469) apply and may limit the amount of the GO Zone additional first year depreciation deduction that may be claimed by the members of MNO.

(b) Example 2. During 2006, C, an individual, places in service a new restaurant in the GO Zone and employs D to operate it. During 2006, C periodically met with D to review operations relating to the restaurant. C also approved the restaurant's budget for 2006 that was prepared by D. D performs all the necessary operating functions, including hiring chefs, acquiring the necessary food and restaurant supplies, and writing the checks to pay all bills and the chefs' salaries. Based on these facts and circumstances, C meaningfully participates in the management of the restaurant. Consequently, all of the use of the restaurant is in the GO Zone and in the active conduct of a trade or business by C in the GO Zone. Accordingly, the unadjusted depreciable basis of the restaurant qualifies for the GO Zone additional first year depreciation deduction (assuming all other requirements are met). However, limitation provisions of the Code (for example, § 469) apply and may limit the amount of the GO Zone additional first year depreciation deduction that may be claimed by C.

(c) Example 3. During 2006, PRS, a partnership, constructs and places in service a new small commercial building in the GO Zone and leases it to E, an unrelated party, who uses the building as a fast food restaurant. This building is the only property owned by PRS. The lease agreement between PRS and E is a triple net lease under which E is responsible for all of the costs relating to the building (for example, paying all taxes, insurance, and maintenance expenses) in addition to paying rent. Because of the triple net lease, PRS does not meaningfully participate in the management or operations of the building and the building is not used in the active

conduct of a trade or business by PRS in the GO Zone. Accordingly, the building does not qualify for the GO Zone additional first year depreciation deduction.

(d) Example 4. Same facts as Example 3, except that PRS, during 2006, constructs and places in service two other new commercial buildings in the GO Zone and leases these buildings to F, an unrelated party, who uses the two other buildings as office space. The lease agreement between PRS and F is not a triple net lease. G, a partner in PRS, manages and operates the two office buildings for PRS. Because G manages and operates the two office buildings for PRS, PRS meaningfully participates in the management and operations of the two office buildings. Consequently, these two office buildings are used in the active conduct of a trade or business by PRS in the GO Zone. Accordingly, the total unadjusted depreciable basis of the two office buildings leased to F qualifies for the GO Zone additional first year depreciation deduction (assuming all other requirements are met). However, limitation provisions of the Code (for example, § 469) apply and may limit the amount of the GO Zone additional first year depreciation deduction that may be claimed by the partners of PRS with respect to the two buildings leased to F. Further, because the requirements of § 1400N(d)(2)(A)(ii) apply on a property-by-property basis, the building leased to E does not qualify for the GO Zone additional first year depreciation deduction, as provided in Example 3.

SECTION 4. ELECTION NOT TO DEDUCT GO ZONE ADDITIONAL FIRST YEAR DEPRECIATION

.01 In General. Pursuant to § 1400N(d)(2)(B)(iv), a taxpayer may make an election not to deduct the GO Zone additional first year depreciation for any class of property that is GO Zone property placed in service during the taxable year. If a

taxpayer makes this election, then the election applies to all GO Zone property that is in the same class of property and placed in service in the same taxable year, and no additional first year depreciation deduction is allowable for the class of property. In addition, the depreciation adjustments under § 56 apply to that property for purposes of computing the taxpayer's alternative minimum taxable income. The election not to deduct the GO Zone additional first year depreciation is made by each person owning GO Zone property (for example, for each member of a consolidated group by the common parent of the group, by the partnership, or by the S corporation).

.02 Definition of Class of Property. For purposes of the election under § 1400N(d)(2)(B)(iv) not to deduct the GO Zone additional first year depreciation, the term "class of property" means:

(1) Except for the property described in this section 4.02(2), (3), (4), (5), and (6), each class of property described in § 168(e) (for example, 5-year property);

(2) Water utility property as defined in § 168(e)(5) and depreciated under § 168;

(3) Computer software as defined in, and depreciated under, § 167(f)(1) and the regulations thereunder;

(4) Qualified leasehold improvement property as defined in § 168(k)(3) and § 1.168(k)-1(c) and depreciated under § 168;

(5) Nonresidential real property as defined in § 168(e)(2)(B) and depreciated under § 168; or

(6) Residential rental property as defined in § 168(e)(2)(A) and depreciated under § 168.

.03 Time and Manner of Making the Election.

(1) In general. An election not to deduct the GO Zone additional first year depreciation for any class of property that is GO Zone property placed in service during the taxable year must be made by the due date (including extensions) of the federal income tax return for the taxable year in which the GO Zone property is placed in service by the taxpayer. The election must be made in the manner prescribed on Form 4562, Depreciation and Amortization, and its instructions.

If a taxpayer files its 2004 or 2005 federal income tax return on or after September 13, 2006, then the taxpayer must follow the instructions for the 2005 Form 4562 (Rev. January 2006) for the manner for making the election not to deduct the GO Zone additional first year depreciation for any class of property that is GO Zone property placed in service by the taxpayer on or after August 28, 2005, during the taxpayer's taxable year beginning in 2004 or 2005 (2004 or 2005 taxable year). If a taxpayer files its 2004 or 2005 federal income tax return before September 13, 2006, then see section 4.03(2) of this notice for the procedures for making the election not to deduct the GO Zone additional first year depreciation for any class of property that is GO Zone property placed in service by the taxpayer on or after August 28, 2005, during the taxpayer's 2004 or 2005 taxable year.

(2) Special rules for 2004 or 2005 federal income tax return filed before September 13, 2006.

(a) In general. If a taxpayer files its 2004 or 2005 federal income tax return before September 13, 2006, then the taxpayer has made the election not to deduct the GO Zone additional first year depreciation for a class of property that is GO Zone

property placed in service by the taxpayer on or after August 28, 2005, during the taxpayer's 2004 or 2005 taxable year, if the taxpayer:

(i) made the election within the time prescribed in section 4.03(1) of this notice and in the manner prescribed in the instructions for the 2005 Form 4562 (Rev. January 2006) (that is, attach a statement to the taxpayer's timely filed return (including extensions) indicating the class of property for which the taxpayer is making the election and that, for such class of property, the taxpayer is electing not to claim the GO Zone additional first year depreciation deduction); or

(ii) made the deemed election provided for in section 4.03(2)(b) of this notice.

(b) Deemed election. If section 4.03(2)(a)(i) of this notice does not apply, a taxpayer that files its 2004 or 2005 federal income tax return before September 13, 2006, will be treated as having made the election not to deduct the GO Zone additional first year depreciation for a class of property that is GO Zone property placed in service by the taxpayer on or after August 28, 2005, during the taxpayer's 2004 or 2005 taxable year, if the taxpayer:

(i) on that return, did not claim the GO Zone additional first year depreciation deduction for that class of property but did claim depreciation; and

(ii) does not file an amended federal tax return for the taxpayer's 2004 or 2005 taxable year on or before February 14, 2007, or a Form 3115, Application for Change in Accounting Method, with the taxpayer's federal tax return for the taxpayer's next succeeding taxable year, to claim the GO Zone additional first year depreciation deduction for that class of property.

If a Form 3115 is filed under section 4.03(2)(b)(ii) of this notice, the Form 3115 must be filed in accordance with the automatic change in method of accounting provisions of Rev. Proc. 2002-9, 2002-1 C.B. 327, as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432, or any successor. The change in method of accounting from filing the Form 3115 results in a § 481(a) adjustment. Further, the scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply. Moreover, for purposes of section 6.02(4)(a) of Rev. Proc. 2002-9, the taxpayer should include on line 1a of the Form 3115 the designated automatic accounting method change number "104".

Section 1.446-1(e)(3)(ii) authorizes the Commissioner of Internal Revenue to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting. In addition, section 2.04 of Rev. Proc. 2002-9 provides that unless specifically authorized by the Commissioner, a taxpayer may not request, or otherwise make, a retroactive change in method of accounting, regardless of whether the change is from a permissible or an impermissible method. See generally Rev. Rul. 90-38, 1990-1 C.B. 57.

.04 Revocation. An election not to deduct the GO Zone additional first year depreciation for a class of property that is GO Zone property is revocable only with the prior written consent of the Commissioner. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling in accordance with the provisions of Rev. Proc. 2006-1 (2006-1 I.R.B. 1) (or any successor).

.05 Failure to Make Election Not to Deduct GO Zone Additional First Year Depreciation. If a taxpayer does not make the election described in section 4.01 of this notice within the time and in the manner prescribed in section 4.03 of this notice, the amount of depreciation allowable for that property under § 167(f)(1) or under § 168, as applicable, must be determined for the placed-in-service year and for all subsequent taxable years by taking into account the GO Zone additional first year depreciation deduction. Thus, the election not to deduct the GO Zone additional first year depreciation cannot be made by the taxpayer in any other manner (for example, through a request under § 446(e) to change the taxpayer's method of accounting).

SECTION 5. CERTAIN PROPERTY NOT ELIGIBLE FOR THE GO ZONE ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION

.01 In General. Section 1400N(p)(1) disallows the GO Zone additional first year depreciation deduction for any property described in § 1400N(p)(3). Pursuant to § 1400N(p)(3)(A), such property includes:

(1) any property used in connection with any private or commercial golf course, massage parlor, hot tub facility, suntan facility, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises ("prohibited activities"); or

(2) any gambling or animal racing property.

.02 Prohibited Activities.

(1) Real property used for both a prohibited activity and a non-prohibited activity. Solely for purposes of § 1400N(d), the portion of any real property (determined by square footage) that is dedicated to any prohibited activity described in section

5.01(1) of this notice is not eligible for the GO Zone additional first year depreciation deduction. If real property is used for both a prohibited activity and an activity not described in section 5.01(1) of this notice, the portion of the real property (determined by square footage) that is not dedicated to the prohibited activity is eligible for the GO Zone additional first year depreciation deduction (assuming all other requirements under § 1400N(d) are met). For example, the GO Zone additional first year depreciation deduction for a shopping center that has both a suntan salon and businesses not described in section 5.01(1) of this notice (and that otherwise qualifies for the GO Zone additional first year depreciation deduction under § 1400N(d)), is determined without regard to the portion of the shopping center's unadjusted depreciable basis that bears the same percentage to the total unadjusted depreciable basis as the percentage of square footage dedicated to the prohibited activity (that is, the suntan salon) bears to the total square footage of the shopping center.

(2) Trade or business activity that derives a small percentage of gross receipts from certain prohibited activities.

(a) De minimis rule. Solely for purposes of § 1400N(p)(3)(A)(i), a taxpayer's trade or business activity that has less than 10 percent of its total gross receipts derived from massages, tanning services, or a hot tub facility is not treated as, respectively, a massage parlor, a suntan facility, or a hot tub facility. Such trade or business activity may include, for example, a physical therapy office or a beauty/day spa salon if its gross receipts derived from massages, suntanning, and hot tub facilities are less than 10 percent of its total gross receipts. In determining whether this less than 10 percent test is satisfied, only gross receipts from the taxpayer's trade or business activity that

includes the massages, tanning services, or hot tub facility are taken into account. Further, if a taxpayer is a member of a consolidated group, only the gross receipts of the taxpayer (and not the consolidated group) are taken into account. Also, if the taxpayer is a partnership, S corporation, or other pass-thru entity, only the gross receipts of the pass-thru entity (and not the owners of the pass-thru entity) are taken into account.

(b) Definition of gross receipts. For purposes of this section 5.02(2), the term "gross receipts" means the taxpayer's receipts for the taxable year that are recognized under the taxpayer's methods of accounting used for federal income tax purposes for the taxable year. For this purpose, gross receipts include total sales (net of returns and allowances) and all amounts received for services. In addition, gross receipts include any income from investments, and from incidental or outside sources. For example, gross receipts include interest (including original issue discount and tax-exempt interest within the meaning of § 103), dividends, rents, royalties, and annuities, regardless of whether the amounts are derived in the ordinary course of the taxpayer's trade or business. Gross receipts are not reduced by cost of goods sold or by the cost of property sold if such property is described in § 1221(a)(1), (3), (4), or (5). With respect to sales of capital assets as defined in § 1221, or sales of property described in § 1221(a)(2) (relating to property used in a trade or business), gross receipts are reduced by the taxpayer's adjusted basis in such property. Gross receipts do not include the amounts received in repayment of a loan or similar instrument (for example, a repayment of the principal amount of a loan held by a commercial lender). Finally, gross receipts do not include amounts received by the taxpayer with respect to sales tax

or other similar state and local taxes if, under the applicable state or local law, the tax is legally imposed on the purchaser of the good or service and the taxpayer merely collects and remits the tax to the taxing authority. If, in contrast, the tax is imposed on the taxpayer under the applicable law, then gross receipts include the amounts received that are allocable to the payment of such tax.

.03 Gambling or Animal Racing Property.

(1) In general. Section 1400N(p)(3)(B)(i) defines the term "gambling or animal racing property" as meaning:

(a) any equipment, furniture, software, or other property used directly in connection with gambling, the racing of animals, or the on-site viewing of such racing; and

(b) the portion of any real property (determined by square footage) that is dedicated to gambling, the racing of animals, or the on-site viewing of such racing. However, pursuant to § 1400N(p)(3)(B)(ii), if the portion of the real property dedicated to gambling, the racing of animals, or the on-site viewing of such racing is less than 100 square feet, then that portion is not gambling or animal racing property. For example, no apportionment is required under this 100-square-foot de minimis rule in the case of a retail store that sells lottery tickets in a less than 100 square foot area.

(2) Real property not dedicated to gambling or animal racing. Real property that is not dedicated to gambling, the racing of animals, or the on-site viewing of such racing but is attached to such gaming facilities is eligible for the GO Zone additional first year depreciation deduction (assuming all other requirements under § 1400N(d) are met). Such property may include, for example, hotels, restaurants, and parking lots of

gaming facilities. For example, the GO Zone additional first year depreciation deduction for a building that is used as both a casino and a hotel (and that otherwise qualifies for the GO Zone additional first year depreciation deduction under § 1400N(d)), is determined without regard to the portion of the building's unadjusted depreciable basis that bears the same percentage to the total unadjusted depreciable basis as the percentage of square footage dedicated to gambling (that is, the casino floor) bears to the total square footage of the building.

SECTION 6. RECAPTURE RULES UNDER § 1400N(d)(5)

.01 In General. Section 1400N(d)(5) provides that for purposes of § 1400N(d), rules similar to the recapture rules under § 179(d)(10) and § 1.179-1(e) apply with respect to any GO Zone property that ceases to be GO Zone property.

.02 Application. If GO Zone property is no longer GO Zone property in the hands of the same taxpayer at any time before the end of the GO Zone property's recovery period as determined under § 167(f)(1) or § 168, as applicable, then the taxpayer must recapture in the taxable year in which the GO Zone property is no longer GO Zone property (the recapture year) the benefit derived from claiming the GO Zone additional first year depreciation deduction for such property. The benefit derived from claiming the GO Zone additional first year depreciation deduction for the property is equal to the excess of the total depreciation claimed (including the GO Zone additional first year depreciation deduction) for the property for the taxable years before the recapture year over the total depreciation that would have been allowable for the taxable years before the recapture year as a deduction under § 167(f)(1) or § 168, as applicable, had the GO Zone additional first year depreciation deduction not been claimed (regardless of

whether such excess reduced the taxpayer's tax liability). The amount to be recaptured is treated as ordinary income for the recapture year. For the recapture year and subsequent taxable years, the taxpayer's deductions under § 167(f)(1) or § 168, as applicable, are determined as if no GO Zone additional first year depreciation deduction was claimed with respect to the property. If, subsequent to the recapture year, a change in the use of the property results in the property again being GO Zone property, then the GO Zone additional first year depreciation deduction is not allowable for the property.

.03 Examples. The following examples illustrate the provisions of this section 6.

(a) Example 1. H, a calendar-year taxpayer, owns and operates a furniture store in the GO Zone. In December 2006, H purchases a new delivery truck for $50,000 and places it in service for use in H's business. For 2006, this delivery truck is GO Zone property and is 5-year property under § 168(e). H depreciates its 5-year property placed in service in 2006 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. During 2007, the delivery truck is used less than 80 percent in the GO Zone.

(i) For 2006, H is allowed the GO Zone additional first year depreciation deduction of $25,000 for the delivery truck (unadjusted depreciable basis of $50,000 multiplied by .50). In addition, H's depreciation deduction allowable in 2006 for the remaining adjusted depreciable basis of $25,000 for the delivery truck (the unadjusted depreciable basis of $50,000 reduced by the GO Zone additional first year depreciation deduction of $25,000) is $5,000 (the remaining adjusted depreciable basis of $25,000

multiplied by the annual depreciation rate of .20 for recovery year 1). Thus, H's depreciation deduction allowable in 2006 for the delivery truck totals $30,000.

(ii) For 2007, because the delivery truck does not meet the substantially all requirement described in section 3.01 of this notice, the delivery truck is no longer GO Zone property. Accordingly, for 2007, H must recapture as ordinary income $20,000 ($30,000 depreciation claimed by H for the truck before 2007 less the $10,000 depreciation that would have been allowable for the truck before 2007 had the GO Zone additional first year depreciation deduction not been claimed (unadjusted depreciable basis of $50,000 multiplied by the cumulative annual depreciation rate of .20 before 2007)). In addition, H's depreciation deduction allowable in 2007 for the delivery truck is $16,000 (unadjusted depreciable basis of $50,000 multiplied by the annual depreciation rate of .32 for recovery year 2) (determined as if no GO Zone additional first year depreciation deduction was claimed for the truck).

(b) Example 2. Same facts as in Example 1, except that during 2008, the delivery truck is used 80 percent or more in the GO Zone. The GO Zone additional first year depreciation deduction is not allowable for the delivery truck even though the truck is GO Zone property in the hands of H in 2008. Thus, for 2008, H's depreciation deduction allowable in 2008 for the delivery truck is $9,600 (unadjusted depreciable basis of $50,000 multiplied by the annual depreciation rate of .1920 for recovery year 3) (determined as if no GO Zone additional first year depreciation deduction was claimed for the truck).

SECTION 7. EFFECT ON OTHER DOCUMENTS

.01 Notice 2006-67, 2006-33 I.R.B. 248, is modified and superseded.

.02 Rev. Proc. 2002-9 is modified and amplified to include the automatic change in method of accounting provided under section 4.03(2)(b) of this notice in section 2 of the APPENDIX of Rev. Proc. 2002-9.

SECTION 8. DRAFTING INFORMATION

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