

written consent of the bankruptcy trustee and filing a copy of the written consent with the returns (or amended returns) of the debtor and the estate for their first taxable years ending after November 9, 1992.

(B) *Chapter 11 cases.* In a case under chapter 11 of title 11 of the United States Code, the election is made by incorporating the election into a bankruptcy plan that is confirmed by the bankruptcy court or into an order of such court and filing the pertinent portion of the plan or order with the returns (or amended returns) of the debtor and the estate for their first taxable years ending after November 9, 1992.

(vi) *Election is binding and irrevocable.* Except as provided in paragraph (f)(2)(iii) of this section, the election, once made, is binding on both the debtor and the estate and is irrevocable.

§ 1.1398-3 Treatment of section 121 exclusion in individuals' title 11 cases.

(a) *Scope.* This section applies to cases under chapter 7 or chapter 11 of title 11 of the United States Code, but only if the debtor is an individual.

(b) *Definition and rules of general application.* For purposes of this section, section 121 exclusion means the exclusion of gain from the sale or exchange of a debtor's principal residence available under section 121.

(c) *Estate succeeds to exclusion upon commencement of case.* The bankruptcy estate succeeds to and takes into account the section 121 exclusion with respect to the property transferred into the estate.

(d) *Effective date.* This section is applicable for sales or exchanges on or after December 24, 2002.

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§ 1.1400L(b)-1T Additional first year depreciation deduction for qualified New York Liberty Zone property (temporary).

(a) *Scope.* This section provides the rules for determining the 30-percent additional first year depreciation deduction allowable under section 1400L(b) for qualified New York Liberty Zone property.

(b) *Definitions.* For purposes of section 1400L(b) and this section, the definitions of the terms in § 1.168(k)-

1T(a)(2) apply and the following definitions also apply:

(1) *Building and structural components* have the same meanings as those terms are defined in § 1.48-1(e).

(2) *New York Liberty Zone* is the area located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan in the City of New York, New York.

(3) *Nonresidential real property and residential rental property* have the same meanings as those terms are defined in section 168(e)(2).

(4) *Real property* is a building or its structural components, or other tangible real property except property described in section 1245(a)(3)(B) (relating to depreciable property used as an integral part of a specified activity or as a specified facility), section 1245(a)(3)(D) (relating to single purpose agricultural or horticultural structure), or section 1245(a)(3)(E) (relating to a storage facility used in connection with the distribution of petroleum or any primary product of petroleum).

(c) *Qualified New York Liberty Zone property*—(1) *In general.* Qualified New York Liberty Zone property is depreciable property that—

(i) Meets the requirements in § 1.1400L(b)-1T(c)(2) (description of property);

(ii) Meets the requirements in § 1.1400L(b)-1T(c)(3) (substantial use);

(iii) Meets the requirements in § 1.1400L(b)-1T(c)(4) (original use);

(iv) Meets the requirements in § 1.1400L(b)-1T(c)(5) (acquisition of property by purchase); and

(v) Meets the requirements in § 1.1400L(b)-1T(c)(6) (placed-in-service date).

(2) *Description of qualified New York Liberty Zone property*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (c)(2) if the property is—

(A) Described in § 1.168(k)-1T(b)(2)(i); or

(B) Nonresidential real property or residential rental property depreciated under section 168, but only to the extent it rehabilitates real property damaged, or replaces real property destroyed or condemned, as a result of