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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Dear _____ :

This letter responds to your request for information dated September 10, 2008, concerning section 7 of Revenue Procedure 2008-54, 2008-38 I.R.B. 722. A copy of Rev. Proc. 2008-54 is enclosed for your reference.

Rev. Proc. 2008-54 announced that the Internal Revenue Service and the Treasury Department intend to amend section 1.179-5(c) of the Income Tax Regulations to permit taxpayers to make an election under section 179 without the consent of the Commissioner of Internal Revenue on an amended return for taxable years beginning after 2007. See section 1 of Rev. Proc. 2008-54.

Section 179(c) of the Internal Revenue Code provides the rules for making and revoking elections under section 179 (section 179 election). Pursuant to section 179(c)(1), a section 179 election is made in the manner prescribed by regulations. Prior to 2006, section 179(c)(2) provided that a section 179 election for taxable years beginning after 2002 and before 2008 may be revoked by the taxpayer with respect to any section 179 property. Section 1.179-5(c)(1) provides that for any taxable year beginning after 2002 and before 2008, a taxpayer is permitted to make or revoke a section 179 election without the consent of the Commissioner on an amended federal tax return for that taxable year.

The Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222, 120 Stat. 345 (2006), and the Small Business and Work Opportunity Tax Act of 2007, Pub. L. No. 110-28, 121 Stat. 112 (2007), amended section 179(c)(2) by extending from "2008" to "2011" the rules for revoking a section 179 election. Section 1.179-5(c) was promulgated in 2005 and has not been amended to reflect the extension to 2011. As a result, some taxpayers are uncertain about whether a section 179 election for taxable years beginning after 2007 may be made on an amended federal tax return. Section 7

of Rev. Proc. 2008-54 provides the rules for making such a section 179 election. See section 2.06 of Rev. Proc. 2008-54.

Section 7 of Rev. Proc. 2008-54 provides that for any taxable year beginning after 2007 and before the last year provided in section 179(c)(2) for revoking a section 179 election by a taxpayer with respect to any section 179 property, the taxpayer will be permitted to make a section 179 election without the Commissioner's consent on an amended federal tax return for that taxable year. Further, section 7 provides that the Internal Revenue Service and the Treasury Department intend to amend section 1.179-5(c) to incorporate the guidance set forth under section 7 and that until section 1.179-5(c) is amended, taxpayers may rely on the guidance set forth in section 7. See section 7 of Rev. Proc. 2008-54. Accordingly, a taxpayer is permitted to make a section 179 election without the Commissioner's consent on an amended federal tax return for a taxable year beginning after 2007 and before 2011 (assuming the last year provided in section 179(c)(2) is 2011).

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See section 2.04 of Rev. Proc. 2009-1, 2009-1 I.R.B. 1, 7 (Jan. 5, 2009). We hope the materials enclosed will be helpful to you; however, if you should have any additional questions, please contact our office at

Sincerely,

Kathleen Reed

Kathleen Reed
Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure (1):
Rev. Proc. 2008-54