

A partner or S corporation shareholder in an entity that qualifies as an ESB may make the Section 172(b)(1)(H) election for its share of the qualifying ESB income, gain, loss, and deduction that is allowed in calculating the taxpayer's applicable 2008 NOL. In determining whether a partnership, S corporation, or sole proprietorship qualifies as an ESB, the gross receipts test applies at the partnership, corporate, or sole proprietorship level. The NOL carryback amount is limited to the lesser of:

1. The taxpayer's items of income, gain, loss, or deduction that are allowed in calculating the taxpayer's applicable NOL and are from one or more partnerships, S corporations, or sole proprietorships that qualify as ESBs.
2. The taxpayer's applicable 2008 NOL. ■

IRS RELEASES 2009 DEPRECIATION LIMITS FOR AUTOMOBILES

Rev. Proc. 2009-24, 2009-17 IRB 885, lists the maximum depreciation deductions available for passenger automobiles, light trucks, and vans first placed in service during 2009. The applicable deduction ceiling for a vehicle depends on whether the 50% additional first-year depreciation deduction is being claimed. While the dollar amounts for passenger automobiles remain the same as in 2008, the figures for trucks and vans are lower in 2009.

The maximum deductions listed below are based on 100% business use of the vehicle. If the vehicle is put to some personal use, the maximum deductions must be reduced proportionately.

The depreciation limits for autos (other than light trucks and vans) for which the taxpayer has elected out of a bonus depreciation deduction are as follows:

- \$2,960 for the tax year the vehicle is placed in service.
- \$4,800 for the second tax year.
- \$2,850 for the third tax year.
- \$1,775 for each succeeding year.

If the bonus depreciation applies, the depreciation limits for autos (other than light trucks and vans) are as follows:

- \$10,960 for the tax year the vehicle is placed in service.
- \$4,800 for the second tax year.
- \$2,850 for the third tax year.
- \$1,775 for each succeeding year.

The corresponding figures for light trucks and vans (i.e., passenger autos built on a truck chassis, rated at 6,000 pounds gross (loaded) vehicle weight or less) are as follows: if bonus depreciation does not apply:

- \$3,060 (reduced from \$3,160 in 2008) for the tax year the vehicle is placed in service.
- \$4,900 (reduced from \$5,100 in 2008) for the second tax year.
- \$2,950 (reduced from \$3,050 in 2008) for the third tax year.
- \$1,775 (reduced from \$1,875 in 2008) for each succeeding year.

With bonus depreciation, the maximum deductions for light trucks and vans are:

- \$11,060 (reduced from \$11,160 in 2008) for the tax year the vehicle is placed in service.
- \$4,900 (reduced from \$5,100 in 2008) for the second tax year.
- \$2,950 (reduced from \$3,050 in 2008) for the third tax year.
- \$1,775 (reduced from \$1,875 in 2008) for each succeeding year.

Heavier vehicles, such as large SUVs, are not subject to these limitations because they fall outside of the Section 280F(d)(5) definition of a passenger auto. Under Section 179(b)(6), not more than \$25,000 of the cost of a heavy SUV may be expensed under Section 179. The balance of the heavy SUV's cost may be depreciated under the regular rules—including bonus first-year depreciation for 2008—that apply to five-year MACRS property (e.g., a 20% first-year deduction allowance if the half-year convention applies for the year the SUV was placed in service).

Along with the maximum depreciation deduction amounts, the IRS has also issued two sets of tables of inclusion amounts for taxpayers who lease, rather than own, vehicles put to business use. The inclusion amounts are intended to offset the deductible lease payments these taxpayers claim in order to approximate the restrictions on tax benefits received by vehicle owners. The inclusion amount tables apply to only vehicles with values exceeding certain amounts. Bonus first-year depreciation increases the minimum vehicle fair market values at which inclusion amounts apply. Thus, the inclusions affect only those passenger automobiles and trucks or vans with a lease term starting in 2009 that have fair market values above \$18,500. The inclusion amounts, however are slightly higher for passenger automobiles than for trucks or vans. ■