

Extension of Time to Elect Mid-quarter Convention Relief Under Notice 2001-70 and Notice 2001-74.

Notice 2003-45

This notice amplifies the tax relief granted in Notice 2001-70, 2001-2 C.B. 437 (November 5, 2001), and in Notice 2001-74, 2001-2 C.B. 551 (December 3, 2001), by permitting an automatic extension of time to make the election provided under Notice 2001-70 and Notice 2001-74.

Section 168(d)(3) of the Internal Revenue Code generally provides that, except as provided in regulations, if the aggregate basis of property placed in service during the last three months of the taxable year exceeds 40 percent of the aggregate basis of property (other than property described in § 168(d)(3)(B)) placed in service during the taxable year, the applicable depreciation convention is the mid-quarter convention for all property (other than property described in § 168(d)(2)) subject to § 168 that is placed in service during the taxable year.

In Notice 2001-70, the Treasury Department and the Internal Revenue Service announced their intention to issue regulations permitting taxpayers to elect not to apply the mid-quarter convention rules contained in § 168(d)(3) to property placed in service in the taxable year that included September 11, 2001, if the third quarter of the taxpayer's taxable year included September 11, 2001. Notice 2001-70 provided that, pending the issuance of the regulations, an eligible taxpayer that wished to elect not to apply the mid-quarter convention rules could make the election by writing "Election Pursuant to Notice 2001-70" across the top of the taxpayer's Form 4562, *Depreciation and Amortization*, for the taxpayer's taxable year that included September 11, 2001. Notice 2001-74 expanded Notice 2001-70 by permitting taxpayers to elect not to apply the mid-quarter convention rules to property placed in service in the taxable year that included September 11, 2001, if the fourth quarter of the taxpayer's taxable year included September 11, 2001.

Notice 2001-74 also provided guidance for taxpayers that file Form 2106, *Employee Business Expenses*, rather than Form 4562, or that file their tax returns electronically, to elect not to apply the mid-quarter convention rules. Under both notices, the election was required to be made on the taxpayer's tax return for the taxable year that included September 11, 2001. No provision was made for an eligible taxpayer wishing to amend its tax return to make the election.

Treasury and the Service have been made aware that certain taxpayers did not receive notice of the availability of this election until after the tax returns for their taxable year that included September 11, 2001, were filed. This notice is intended to relieve taxpayers of the burden of applying for an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election on an amended tax return for that year.

Accordingly, Notice 2001-70 and Notice 2001-74 are amplified to provide that a taxpayer qualifying under either notice who filed a timely tax return for the taxable year that includes September 11, 2001, but failed to make the election provided under Notice 2001-70 or Notice 2001-74, is granted an automatic extension of time until December 31, 2003, to amend its tax return for the taxable year that includes September 11, 2001, and any subsequent taxable years, in order to make the election under Notice 2001-70 or Notice 2001-74 and reflect any necessary adjustments resulting from the election. For example, a sole proprietor that timely filed its 2001 and 2002 twelve-month calendar year tax returns and qualified under Notice 2001-70 to elect not to apply the mid-quarter convention rules for its taxable year ending December 31, 2001, would be granted an automatic extension of time until December 31, 2003, to make the election on an amended 2001 tax return and reflect any necessary adjustments resulting from the election, as well as amend its 2002 tax return to reflect any necessary adjustments resulting from the election. The election on the amended tax return is made in the same manner provided in Notice 2001-70 and in Notice 2001-74.

Treasury and the Service intend to amend the regulations under § 168 to incorporate the guidance set forth in this notice. Until the regulations are amended, taxpayers may rely on the guidance set forth in this notice.

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