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Section 179 Expensing

Are Vineyards and Orchards eligible for Expensing under Section 179?

Section 179 Background

Under Section 179, a taxpayer can elect to deduct as an expense, rather than to depreciate, up to a specified amount of the cost of qualifying new or used tangible personal property placed in service during the tax year in the taxpayer's trade or business.

For tax years beginning in 2010 or 2011: the dollar limitation on the expense deduction is \$500,000 and the investment-based reduction in the dollar limitation begins to take effect when property placed in service in a tax year exceeds \$2,000,000. For tax years beginning in 2012, the maximum expensing amount under Section 179 is \$125,000 and the investment-based phaseout amount is \$500,000. However, for tax years beginning after 2012, the maximum expensing amount decreases to \$25,000 and the investment-based phaseout amount decreases to \$200,000.

In general, property is eligible for Section 179 expensing if it is:

- Tangible property depreciated under the MACRS accounting rules, regardless of its depreciation recovery period
- For the tax year beginning in 2010 or 2011, up to \$500,000 of qualified real property (qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property)
- Off-the-shelf computer software if placed in service in a tax year beginning before 2013

Eligibility of Vineyards and Orchards for Section 179 Expensing

The definition of Section 179 property is defined as tangible property to which it is depreciable and acquired by purchase for use in a trade or business. Property is defined by its availability to be subject to depreciation and falls into one of six classes, the first of which is personal property and the second is other property (not including a building or its structural components) whose basis has been reduced by depreciation, amortization or the deductions that are treated as amortization during a period in which the property was used as an integral part of manufacturing, production or extraction.

Vineyards and orchards acquired by purchase for use in the active conduct of a trade or business are depreciable. Thus, the question of whether vineyards or orchards are Section 179 property comes down to whether they may be treated as "other property" used as an integral part of manufacturing, production, or extraction.

For purposes of the regulation, the terms "manufacturing", "production", and "extraction" include the "cultivation of the soil, the raising of livestock, and the mining of minerals. Thus, property would include, for example, property used as an integral part of the cultivation of orchards, gardens, or nurseries". Finally, the ruling specifically says that trees of fruit orchards or groves purchased and held for the production of income qualify as "other tangible property". Thus, farming is a production activity and vineyards as well as orchards qualify as "other property" under Section 179.

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However, an Audit Techniques Guide (ATG) rules against the expensing for such property, but its conclusion appears to be based on prior law. A more recent ATG doesn't clarify if it agrees with expensing vineyard or orchards under Section 179, but it doesn't disagree with it, either. Thus, it is open to interpretation as far as IRS is concerned. At best, the ATG may signal that the IRS is reconsidering its view on whether orchards and vineyards are eligible for expensing under Section 179.

Consult your McQuadeBrennan client executive today if you are interested in a new business venture that could utilize Section 179 expensing.

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