

**Notes and Comments: This notice is the same as Notice 2001-74 except that 2001-74 permits favorable 2001 depreciation treatment for those taxpayers where September 11, 2001 falls within the fourth quarter of the taxable year as opposed to the third quarter as does this particular notice. Emphasis added.**

### **Cumulative Bulletin Notice 2001-70,**

[Code Sec. 168 ]

Depreciation: Modified accelerated cost recovery system: MACRS short tax years: Mid-quarter convention: Disaster relief.--The IRS intends to issue regulations permitting taxpayers to elect not to apply the mid-quarter convention, depreciation rules contained in Code Sec. 168(d)(3) to certain property placed in service in the tax year that includes September 11, 2001. The Service has provided taxpayers with a mechanism for making the election before regulations are issued. Taxpayers may rely on this notice until regulations under Code Sec. 168 are amended to incorporate this guidance.

### **Notice 2001-70**

This notice announces that the Treasury Department and the Internal Revenue Service intend to issue regulations permitting taxpayers to elect not to apply the mid-quarter convention rules contained in §168(d)(3) of the Internal Revenue Code to certain property placed in service in the taxable year that includes September 11, 2001. This notice also provides taxpayers a mechanism for making the election before regulations are issued.

Section 168(d)(3) 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 for all property (other than property described in §168(d)(2) ) to which §168 applies placed in service during the taxable year is the mid-quarter convention.

Many taxpayers time the acquisition and placing in service of property within a taxable year to avoid application of the mid-quarter convention. Treasury and the Service have been made aware that, as a result of events related to the September 11, 2001, terrorist attacks, many taxpayers have encountered difficulty completing the acquisition and placing in service of property in accordance with **plans developed earlier in the year**, and certain taxpayers would choose to delay acquisition and placing of property in service during the last quarter of their taxable year if failing to delay would result in application of the mid-quarter convention.

**Accordingly, if the third quarter of the taxpayer's 2001 taxable year includes September 11, 2001, then the taxpayer may elect to apply the half-year convention to all property (other than property described in §168(d)(2) ) placed in service during the taxpayer's 2001 taxable year for purposes of §168(d) .**

To make the election under this notice, a taxpayer must write "Election Pursuant to Notice 2001- 70 " across the top of its Form 4562, Depreciation and Amortization, for the taxpayer's taxable year that includes September 11, 2001.

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 on (202) 622-3110 (not a toll-free call).

File IRS Notice 200-70