

## Section 168.—Accelerated Cost Recovery System

**Retail motor fuels outlet.** A retail motor fuels outlet is 15-year property for depreciation purposes whether or not the taxpayer-owner is the operator of the motor fuels business.

### Rev. Rul. 97-29

#### ISSUE

If a taxpayer is the owner, but not the operator, of a retail motor fuels outlet, is the outlet 15-year property for depreciation purposes under § 168(e)(3)(E) of the Internal Revenue Code?

#### FACTS

A retail motor fuels outlet may be owned by one entity and operated by another entity. Often, the owner of the property leases the property to an operator. In addition, businesses other than the motor fuels business may operate in the same building. For example, an outlet building may contain a restaurant or video arcade. These businesses may be owned and operated by different taxpayers that make payments to the owner of the outlet building or to a sublessor.

#### LAW AND ANALYSIS

Section 1120 of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 110 Stat. 1755 (1996) (the Act), amended § 168(e)(3)(E) to provide that 15-year property includes any § 1250 property that is a retail motor fuels outlet whether or not food or other convenience items are sold at the outlet. The legislative history of the Act provides that property will qualify as a

retail motor fuels outlet if 50 percent or more of the gross revenues generated from the property are derived from petroleum sales, or 50 percent or more of the floor space in the property is devoted to petroleum marketing sales. A motor fuels outlet of 1400 square feet or less qualifies as a retail motor fuels outlet under the Act without application of either 50 percent test. S. Rep. No. 281, 104th Cong., 2d Sess. 14-16 (1996).

Section 168(e)(3)(E) provides that any § 1250 property that qualifies as a retail motor fuels outlet is 15-year property. There is no distinction between an owner of a retail motor fuels outlet that also operates the motor fuels business and an owner that does not operate the motor fuels business. Accordingly, § 1250 property the use of which meets the definition of a retail motor fuels outlet is treated as 15-year property for depreciation purposes whether or not the owner is the operator. In applying the 50-percent gross revenues test to determine if the property qualifies as a retail motor fuels outlet, the owner of an outlet building must aggregate the gross revenues of all businesses operated in the outlet building whether or not such businesses are operated by the owner.

#### HOLDING

A retail motor fuels outlet is 15-year property for depreciation purposes under § 168(e)(3)(E) whether or not the taxpayer-owner is the operator of the motor fuels business.

#### DRAFTING INFORMATION

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