

that the prior consent of the Commissioner of Social Security (or other authorized officer or employee thereof) has been obtained.

[T.D. 6883, 31 FR 6589, May 3, 1966, as amended by T.D. 7580, 43 FR 60159, Dec. 26, 1978]

§ 1.9200-1 Deduction for motor carrier operating authority.

(a) *In general.* Section 266 of the Economic Recovery Tax Act of 1981 (Pub. L. 97-34, 95 Stat. 265) provides that, for purposes of chapter 1 of the Internal Revenue Code of 1954, an ordinary deduction shall be allowed in computing the taxable income of all taxpayers who either held one or more motor carrier operating authorities on July 1, 1980, or later acquired a motor carrier operating authority pursuant to a binding contract in effect on July 1, 1980. The deduction for each motor carrier operating authority is to be allowed ratably over a 60-month period and is equal to the adjusted basis of the motor carrier operating authority on July 1, 1980. Except as provided in this section, no deduction is allowable for any diminution in value of any motor carrier operating authority caused by administrative or legislative actions to decrease restrictions on entry into the interstate motor carrier business.

(b) *Person entitled to claim deduction.* In general, the deduction provided by this section for a particular motor carrier operating authority may be claimed only by the taxpayer which held the authority on July 1, 1980. However, if another person acquired the motor carrier operating authority after July 1, 1980, pursuant to a binding contract in effect on that date, the deduction for such authority may be claimed only by the acquirer and may not be claimed by the taxpayer which held the authority on July 1, 1980. A taxpayer, otherwise entitled to claim a deduction under this section, who sells a motor carrier operating authority after July 1, 1980 may not claim an amortization deduction for such authority for any month which begins after the date of such sale. In addition, acquisition of a motor carrier operating authority after July 1, 1980, if not pursuant to a binding contract in effect on July 1, 1980, will not entitle the acquirer to a deduction under this section, unless the op-

erating authority is acquired pursuant to a transaction to which section 381 applies.

(c) *Allowance of deduction—(1) Determination of period for deduction—(i) General rule.* Except as provided in paragraph (c)(1)(ii) of this section, the 60-month period for taking the deduction provided by this section for a particular motor carrier operating authority begins with the month of July 1980, or, if later, the month in which the motor carrier operating authority was acquired pursuant to a binding contract in effect on July 1, 1980.

(ii) *Election.* In lieu of beginning the 60-month period as provided in paragraph (c)(1)(i) of this section, the taxpayer may elect to begin the 60-month period with the first month of the taxpayer's first taxable year beginning after July 1, 1980. This election, if made, shall apply to the deduction for all motor carrier operating authorities either held by the taxpayer on July 1, 1980, or later acquired by the taxpayer by the end of the first month of the first taxable year beginning after July 1, 1980, pursuant to a binding contract in effect on July 1, 1980. Any such election will not apply to the determination of the period for amortizing the bases of authorities acquired by the taxpayer after the end of the first month of the first taxable year beginning after July 1, 1980.

(2) *Amount of monthly deduction.* In the case of each motor carrier operating authority for which the taxpayer is entitled (under paragraph (b) of this section) to claim a deduction, the deduction for each month during the 60-month period relating to the motor carrier operating authority is equal to the adjusted basis (determined under paragraph (e) of this section) of the motor carrier operating authority divided by 60.

(d) *Definition of motor carrier-operating authority.* For purposes of § 1.9200-2 and this section, the term "motor carrier operating authority" means a certificate or permit held by a motor common carrier or motor contract carrier of property and issued pursuant to the Revised Interstate Commerce Act, 49 U.S.C. 10921-10933 (Supp. III 1979). The terms "motor common carrier" and

“motor contract carrier” shall be defined as in 49 U.S.C. 10102 (Supp. III 1979) and do not include persons meeting the definition of freight forwarder contained in 49 U.S.C. 10102 (Supp. III 1979).

(e) *Adjusted basis of motor carrier operating authority*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, the adjusted basis of a motor carrier operating authority for which a deduction is allowed under this section is the adjusted basis of the motor carrier operating authority as determined under sections 1012 and 1016 in the hands of the taxpayer who is entitled to claim the deduction under paragraph (b) of this section.

(2) *Special rule in case of certain stock acquisitions*—(i) *Election by holder.* A corporation entitled to claim a deduction under paragraph (b) of this section for a motor carrier operating authority may elect to allocate a portion of the cost basis of a qualified acquiring party in the stock of an acquired corporation, to the basis of the authority. A qualified acquiring party is a corporation (or a noncorporate person or group of noncorporate persons described in paragraph (e)(2)(ii) of this section) that after June 21, 1952, and on or before July 1, 1980 (or after July 1, 1980 under a binding contract in effect on such date) acquired by purchase, within the meaning of section 334(b)(3) and during a period of not more than 12 months, 80 percent or more of the stock (as described in section 334(b)(2)(B)) of a corporation (the acquired corporation) which held the authority directly or indirectly on the date which is the end of the period of 12 months or less within which such 80 percent of the acquired corporation’s stock was purchased. The election to allocate basis in an acquired corporation’s stock to the basis in an authority may be made only if 80 percent of all classes of the acquired corporation’s stock (other than non-voting stock which is limited and preferred as to dividends) was acquired by purchase (within the meaning of section 334(b)(3)) during a period of not more than 12 months, as described in section 334(b)(2)(B). If the qualified acquiring party is a corporation, the taxpayer holding the authority on July 1, 1980, may elect the basis allocation of

this paragraph only if it is a member of the affiliated group (as defined in section 1504(a)) of which the qualified acquiring party is a member. If there is more than one acquisition of stock that might permit an election to allocate basis under this paragraph (e)(2)(i), the taxpayer may elect to allocate to the authority only the basis in the acquired corporation’s stock held by the qualified acquiring party which became a qualified acquiring party as a result of the last of such acquisitions.

(ii) *Certain noncorporate persons treated as qualified parties.* For purposes of paragraphs (e)(2) (i) through (vi) of this section, the term “qualified acquiring party” shall include a noncorporate person or group of noncorporate persons which, after June 21, 1952 and on or before July 1, 1980, acquired in one purchase, stock in a corporation (the acquired corporation) which at the time of acquisition held, directly or indirectly, a motor carrier operating authority. In order to be treated as a qualified acquiring party under this paragraph, a noncorporate person or group of noncorporate persons must have held stock constituting control (within the meaning of section 368(c)) of the acquired corporation on July 1, 1980. A group of noncorporate persons consists of two or more noncorporate persons who, acting together on the same date, made the required purchase of stock in the acquired corporation.

(iii) *Portion of stock basis allocable to basis of authority when stock of direct holder of authority is acquired.* If the qualified acquiring party acquired the stock of a corporation directly holding the authority, the portion of the stock basis allocable to the basis of the authority is the amount that would have been properly allocable under section 334(b)(2) if the qualified acquiring party were a corporation that had received the authority in a distribution of all the acquired corporation’s assets in a complete liquidation of the acquired corporation immediately after the acquisition of the acquired corporation’s stock. If the acquired corporation’s stock was acquired on more than one date, the date on which the liquidation is deemed to have occurred shall be the

date which is the date of the last acquisition by purchase of stock of the acquired corporation within the 12-month period described in section 334(b)(2)(B).

(iv) *Portion of stock basis allocable to basis of authority when stock of indirect holder of authority is acquired.* If the qualified acquiring party acquired the stock of a corporation indirectly holding the authority (such as by owning all of the stock of a subsidiary that directly holds the authority), a portion of the qualified acquiring party's cost basis in the stock of the acquired corporation may be allocated to the basis in the operating authority. The portion allocable is the amount that would have been properly allocable under section 334(b)(2) if, immediately before the liquidation of the acquired corporation on the date of the last acquisition by purchase of stock of the acquired corporation within the 12-month period described in section 334(b)(2)(B), the authority had been transferred in such a way (such as by liquidating the subsidiary that directly holds the authority) that the qualified acquiring party

would have received direct ownership of the authority upon the liquidation of the acquired corporation immediately after the acquisition.

(v) *Other assets to be accounted for.* For purposes of paragraphs (e)(2) (iii) or (iv) of this section, in determining the portion of stock basis properly allocable to the operating authority under section 334(b)(2), the portion of the qualified acquiring party's basis in the acquired corporation's stock that would have been allocable following the liquidation to other assets of the acquired corporation, including intangible assets such as goodwill and going concern value, must be taken into account.

(vi) *Adjustments to basis in acquired corporation's stock and other assets.* If a taxpayer makes the election provided by paragraph (e)(2)(i) of this section, the qualified acquiring party's basis in the stock of the acquired corporation shall be decreased, effective as of July 1, 1980, by the amount determined by the following formula:

$$\frac{\text{Basis in acquired corporation's stock}}{\text{Basis in acquired corporation's stock plus un-secured liabilities of acquired corporation}} \times \text{Amount allocated to basis in authority under section 334(b)(2) minus acquired corporation's basis in authority.}$$

In addition, if the aggregate basis of the assets of the acquired corporation other than the authority as of July 1, 1980 (reduced by the liabilities secured by such assets) exceeds the qualified acquiring party's basis in the stock of the acquired corporation remaining after application of the preceding sentence, then the bases of such assets shall be reduced proportionately so that their aggregate basis as of such date (minus secured liabilities) is equal to such remaining stock basis. If the acquired corporation held the authority indirectly, appropriate basis reductions shall be made to reflect the transfers deemed to have occurred under paragraph (e)(iv) of this section.

(vii) *Pre-TEFRA law applies.* References made in this section to section

334 of the Code relate to such section as it existed before amendment by the Tax Equity and Fiscal Responsibility Act of 1982.

(f) *Adjustment to basis of motor carrier operating authority.* A taxpayer's basis in a motor carrier operating authority must be reduced by the amount of any amortization deductions allowable to the taxpayer under this section.

(g) *Examples.* The principles of this section may be illustrated by the following examples:

Example 1. (i) Corporation X acquired all the stock of corporation Y for \$130,000 in 1970. Y's assets at the time of acquisition consisted of a motor carrier operating authority valued at \$180,000 in which it has a basis of \$60,000, trucks with a fair market value of \$70,000 and an aggregate basis of

§ 1.9200-2

26 CFR Ch. I (4-1-10 Edition)

\$30,000, and goodwill valued at \$30,000. Y has \$50,000 of liabilities secured by the trucks and \$100,000 of unsecured liabilities. Both X and Y use a June 30 fiscal year for tax purposes.

(ii) Y is the only taxpayer eligible to claim a deduction under § 1.9200-1(b). If X sold its Y stock to Z in October 1980 (other than pursuant to a binding contract in effect on July 1, 1980), Y would continue to be the only taxpayer eligible to claim the deduction. However, if Y sold the operating authority to W in February 1981, neither Y nor W would be eligible to claim the monthly deduction for the remainder of the 60-month period. Also, Y would realize gain or loss on the sale after reducing its basis in the authority by any amortization claimed for the period prior to the sale.

(iii) Y must begin the 60-month period in July 1980 unless it elects under paragraph (c)(1)(ii) of this section to begin the 60-month period with the first month of the first taxable year beginning after July 1, 1980, which in Y's case would be July 1981.

(iv) Y's allowable monthly deduction is equal to its adjusted basis in the operating authority of \$60,000, divided by 60, or \$1,000. However, Y may elect under § 1.9200-1(e)(2) to allocate to its basis in the authority a portion of X's basis in Y stock, since X is a qualified acquiring party under paragraph (e)(2)(i) of this section and Y is a member of an affiliated group of which X is a member. Assuming Y makes the election, Y may allocate to the basis of the authority the amount of X's basis in Y stock that would have been allocable under section 334(b)(2) if X had received the authority in a distribution of all of Y's assets in a complete liquidation of Y immediately after X acquired Y's stock.

Therefore, for purposes of the allocation, X's \$130,000 cost basis in Y stock is deemed to be increased by Y's \$100,000 of unsecured liabilities to \$230,000. Of the \$230,000 deemed basis, \$180,000 is allocated to the authority, \$30,000 to goodwill, and \$20,000 to the trucks. Y's allowable monthly amortization deduction would be \$180,000 divided by 60, or \$3,000. X's \$130,000 cost basis in its Y stock must be decreased to \$62,174 as provided in paragraph (e)(2)(vi) of this section. Y's \$30,000 aggregate basis in its trucks remains unchanged.

Example 2. Assume the same facts as in Example (1), except that Y's aggregate basis in the trucks is \$120,000. If Y makes the election under § 1.9200-1(e)(2), the same allocation as in Example (1) would occur. However, in addition to the decrease in X's basis in its Y stock to \$62,174, the \$120,000 aggregate basis in the trucks must be reduced to \$112,174 (so that the \$112,174 basis minus secured liabilities of \$50,000 is equal to X's \$62,174 remaining stock basis).

Example 3. Assume the same facts as in Example (1), except that X pays a negotiated

purchase price of \$120,000 for the Y stock, in order to take into account an anticipated tax liability of \$10,000, relating to potential section 1245 recapture. If Y makes the election under § 1.9200-1(e)(2), then for purposes of allocating X's basis in Y stock, X's cost basis is deemed to be increased by Y's \$100,000 of unsecured liabilities as well as the \$10,000 of potential tax liability resulting from section 1245 recapture, to \$230,000. The \$10,000 of potential recapture tax is treated as a general liability and the deemed basis is allocated among Y's assets as in Example (1). In order to take into account the potential recapture tax liability, such amount must be based on the same fair market values that are used to determine the amount of the stock basis allocable to the operating authority.

(Sec. 266, Economic Recovery Tax Act of 1981 (Pub. L. 97-34; 95 Stat. 265); sec. 517, Highway Revenue Act of 1982 (Pub. L. 97-424; 96 Stat. 2097); and sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[T.D. 7947, 49 FR 8247, Mar. 6, 1984; 49 FR 12244, Mar. 29, 1984]

§ 1.9200-2 Manner of taking deduction.

(a) *In general.* The deduction provided by § 1.9200-1 shall be taken by multiplying the amount of the monthly deduction determined under § 1.9200-1(c)(2) for each motor carrier operating authority by the number of months in the taxable year for which the deduction is allowable, and entering the resulting amount at the appropriate place on the taxpayer's return for each year in which the deduction is properly claimed. Additionally, any taxpayer who has claimed the deduction provided by § 1.9200-1 must (unless it has already filed a statement containing the required information) attach a statement to the next income tax return of the taxpayer which has a filing due date on or after June 4, 1984. The statement shall provide, in addition to the taxpayer's name, address, and taxpayer identification number, the following information for each motor carrier operating authority for which a deduction was claimed:

(1) The taxable year of the taxpayer for which the deduction was first claimed;

(2) Whether the taxpayer's deduction was determined using the adjusted basis of the authority under section 1012 or an allocated stock basis under § 1.9200-1(e)(2); and