Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, §§ 168, 179, 446, 1400F, 1400I, 1400J; 1.179-5, 1.446-1.)

Rev. Proc. 2006-16

SECTION 1. PURPOSE

This revenue procedure explains how a commercial revitalization agency may retroactively allocate commercial revitalization expenditure amounts for certain buildings located in the expanded area of a renewal community pursuant to § 1400E(g) of the Internal Revenue Code. This revenue procedure also explains how a taxpayer may make a commercial revitalization deduction election under § 1400I(a) for these buildings and may deduct the increased § 179 expensing amount under § 1400J for certain § 179 property that is placed in service in the expanded area of a renewal community pursuant to § 1400E(g).

SECTION 2. BACKGROUND

.01 Section 1400E, as added by § 101(a) of the Community Renewal Tax Relief Act of 2000 (“CRTRA”), 2000-3 C.B. 239, 241, provides for the designation of certain communities as renewal communities. An area designated as a renewal community is

eligible for certain tax incentives including a commercial revitalization deduction under § 1400I, increased expensing under § 179 pursuant to § 1400J, and gross income exclusion for capital gain from the sale of qualifying assets pursuant to § 1400F. A "renewal community" is defined in § 1400E(a)(1) as any area that is nominated by one or more local governments and the state or states in which the area is located for designation as a renewal community (the "nominated area") and that the Secretary of Housing and Urban Development ("HUD") designates as a renewal community.

.02 To be designated as a renewal community, § 1400E(c) requires that the nominated area meet certain criteria. Section 1400E(a)(4)(B) and (f)(4) provides that the designations of renewal communities were required to be made by December 31, 2001, using 1990 census data to determine the population and poverty rate criteria.

.03 Section 222(a) of the American Jobs Creation Act of 2004 (the "AJCA"), Pub. L. No. 108-357, 118 Stat. 1480 (October 22, 2004), amended § 1400E by adding § 1400E(g), which authorizes HUD, under certain circumstances and at the request of all governments that nominated an area as a renewal community, to add a contiguous census tract to a renewal community based generally on 2000 census data. Section 222(b) of the AJCA provides that § 1400E(g) is effective as if included in the amendments made by § 101 of the CRTRA.

.04 A taxpayer may make a commercial revitalization deduction election under § 1400I(a) for a qualified revitalization building (as defined in § 1400I(b)(1)) only to the extent that a commercial revitalization expenditure amount is allocated to the building under § 1400I by the commercial revitalization agency (as defined in § 1400I(d)(3)) for the state in which the building is located. Section 1400I allows a taxpayer to elect to

recover the cost of a qualified revitalization building using a more accelerated method than is otherwise allowable under § 168. Pursuant to § 1400I(a), a taxpayer may elect either (1) to deduct one-half of any qualified revitalization expenditures (as defined in § 1400I(b)(2)) chargeable to a capital account with respect to any qualified revitalization building for the taxable year in which the building is placed in service, or (2) to amortize all of these expenditures ratably over the 120-month period beginning with the month in which the building is placed in service. Pursuant to § 1400I(c), the aggregate amount that may be treated as qualified revitalization expenditures with respect to any qualified revitalization building cannot exceed the lesser of (1) $10 million, or (2) the commercial revitalization expenditure amount allocated to the building under § 1400I by the commercial revitalization agency for the state in which the building is located.

.05 Under § 1400I(d), the commercial revitalization agency for each state is permitted to allocate up to $12 million of commercial revitalization expenditure amounts with respect to each renewal community located within the state for each calendar year after 2001 and before 2010. Pursuant to § 1400I(e), the allocation must be made pursuant to a qualified allocation plan (as defined in § 1400I(e)(2)) that is approved by the governmental unit of which the commercial revitalization agency is a part.

.06 Rev. Proc. 2003-38, 2003-1 C.B. 1017, provides the time and manner for a commercial revitalization agency to make allocations under § 1400I of the commercial revitalization expenditure amount for a qualified revitalization building that is placed in service in a renewal community and explains how a taxpayer may make a commercial revitalization deduction election under § 1400I(a). Pursuant to Rev. Proc. 2003-38, a commercial revitalization agency may make: (1) an allocation of commercial

revitalization expenditure amounts for a qualified revitalization building in the calendar year in which that building is placed in service by the taxpayer (a "placed-in-service year allocation"; see section 4 of Rev. Proc. 2003-38); or (2) an allocation of commercial revitalization expenditure amounts for a qualified revitalization building that is not yet placed in service, but will be placed in service by a taxpayer not later than the close of the second calendar year following the calendar year in which the allocation is made, provided the taxpayer's basis in the project of which the building is a part (as of the later of the date that is 6 months after the date that the allocation is made or the close of the calendar year in which the allocation is made) is more than 10 percent of the taxpayer's reasonably expected basis in the project as of the close of the second calendar year following the calendar year in which the allocation is made (a "carryover allocation"; see section 6 of Rev. Proc. 2003-38).

.07 Section 179 provides that, in lieu of depreciation, a taxpayer may elect to deduct the cost of § 179 property (as defined in §179(d)(1)), up to a certain amount, placed in service by the taxpayer for the taxable year. The total cost of § 179 property that a taxpayer may elect to deduct under § 179 (the "dollar limit") is $24,000 for 2002, $100,000 for 2003, $102,000 for 2004, and $105,000 for 2005. However, the dollar limit is reduced (but not below zero) by the amount by which the cost of § 179 property placed in service by the taxpayer during the taxable year exceeded $200,000 for 2002, $400,000 for 2003, $410,000 for 2004, and $420,000 for 2005 (the "reduced dollar limit"). The election under § 179 is made within the time and in the manner provided in § 1.179-5 of the Income Tax Regulations.

.08 If § 179 property is also qualified renewal property, § 1400J(a) and § 1397A(a) modify the dollar limit and the reduced dollar limit for purposes of § 179. The dollar limit under § 179 is increased by the lesser of $35,000, or the cost of § 179 property that is qualified renewal property placed in service during the taxable year. Consequently, if a taxpayer placed in service in 2002, 2003, 2004, and 2005, § 179 property that is also qualified renewal property at a cost of $35,000, the dollar limit under § 179 is $59,000 for 2002, $135,000 for 2003, $137,000 for 2004, and $140,000 for 2005. Further, in determining the reduced dollar limit, a taxpayer takes into account only 50 percent (instead of 100 percent) of the cost of qualified renewal property placed in service during the taxable year.

"Qualified renewal property" is defined in § 1400J(b) as any property to which § 168 applies (or would apply but for § 179) if the property was acquired by the taxpayer by purchase (as defined in § 179(d)(2)) after December 31, 2001, and before January 1, 2010, and the property would be qualified zone property (as defined in § 1397D) if references to renewal communities were substituted for references to empowerment zones in § 1397D. Accordingly, computer software described in § 179(d)(1)(A)(ii) to which § 167 applies (and not § 168) is not qualified renewal property.

.09 Section 1400F provides that gross income does not include any qualified capital gain (as defined in § 1400F(c)) from the sale or exchange of a qualified community asset (as defined in § 1400F(b)) held for more than 5 years.

SECTION 3. RETROACTIVE ALLOCATION OF COMMERCIAL REVITALIZATION EXPENDITURE AMOUNTS FOR A QUALIFIED REVITALIZATION BUILDING IN THE EXPANDED AREA

.01 In general. If HUD approves the expansion of the area of a renewal community pursuant to § 1400E(g) (the "expanded area" of a renewal community), the commercial revitalization agency for that renewal community may make a retroactive allocation described in section 3.04 of this revenue procedure of the "unallocated commercial revitalization expenditure amount" (as determined in section 3.02 of this revenue procedure) for the renewal community for 2002, 2003, 2004, or 2005, as applicable, for a qualified revitalization building in the expanded area of the renewal community. The general rules for making this retroactive allocation are provided in section 3.03 of this revenue procedure.

.02 Unallocated commercial revitalization expenditure amount.

(1) In general. For purposes of § 1400I(d)(1) and this revenue procedure, the aggregate amount that a commercial revitalization agency may allocate for 2002, 2003, 2004, or 2005, for any qualified revitalization building in the expanded area of a renewal community is the unallocated commercial revitalization expenditure amount for the renewal community for 2002, 2003, 2004, or 2005, as applicable.

(2) Determination of amount. The unallocated commercial revitalization expenditure amounts for 2002, 2003, 2004, and 2005, are determined as follows:

(a) 2002 calendar year. Pursuant to section 8.01 of Rev. Proc. 2003-38, the $12 million commercial revitalization expenditure ceiling for 2003 for a renewal community is increased by any portion of the 2002 commercial revitalization expenditure ceiling for that renewal community that was not allocated in 2002 (after taking into account any aggregation and apportionment of the 2002 commercial revitalization expenditure ceiling made in accordance with section 8.02 of Rev. Proc.

2003-38). Accordingly, the unallocated commercial revitalization expenditure amount for any renewal community for 2002 is zero. But see section 3.04(1) of this revenue procedure for a retroactive commercial revitalization expenditure allocation allowable for certain qualified revitalization buildings placed in service in 2002.

(b) 2003 calendar year. The unallocated commercial revitalization expenditure amount of a renewal community for 2003 is determined by reducing the renewal community's commercial revitalization expenditure ceiling for 2003 by the amounts previously allocated for 2003. For 2003, the commercial revitalization expenditure ceiling for a renewal community is $12 million plus the amount of the 2002 commercial revitalization expenditure ceiling for that renewal community that was not allocated in 2002 (after taking into account any aggregation and apportionment of the 2002 commercial revitalization expenditure ceiling made in accordance with section 8.02 of Rev. Proc. 2003-38).

For example, if State A has only one renewal community, RC, and only $7 million of the $12 million commercial revitalization expenditure ceiling for 2002 for RC was allocated for qualified revitalization buildings in RC in 2002, the commercial revitalization ceiling for 2003 for RC in State A is $17 million pursuant to section 8.01 of Rev. Proc. 2003-38. If $14 million of this $17 million was allocated for qualified revitalization buildings in RC in 2003, the unallocated commercial revitalization expenditure amount for 2003 for RC is $3 million.

(c) 2004 calendar year. The unallocated commercial revitalization expenditure amount of a renewal community for 2004 is determined by reducing the $12

million commercial revitalization expenditure ceiling for the renewal community for 2004 by the amounts previously allocated for 2004.

(d) 2005 calendar year. The unallocated commercial revitalization expenditure amount of a renewal community for 2005 is determined by reducing the $12 million commercial revitalization expenditure ceiling for the renewal community for 2005 by the amounts previously allocated for 2005.

(3) Failed building amount. For purposes of section 3.02(2) of this revenue procedure, the amounts previously allocated for 2002, 2003, 2004, or 2005, include any "failed building amount." A failed building amount is the amount of any allocation made in 2002, 2003, 2004, or 2005, as applicable, to a building or project that does not qualify as a qualified revitalization building within the period required by § 1400I and Rev. Proc. 2003-38. However, the failed building amount does not include the amount of a carryover allocation made before July 1 for which the taxpayer does not meet the 10-percent basis requirement by the close of the calendar year if the taxpayer notifies the renewal community or the commercial revitalization agency in that calendar year that the 10-percent basis requirement was not met. In the case of a placed-in-service year allocation, the failed building amount also does not include any amount that was allocated for a building if the taxpayer notifies, in the same calendar year in which the allocation was made, the renewal community or the commercial revitalization agency for that renewal community that the building was not placed in service by the taxpayer by the close of the calendar year for which the allocation was made.

For example, suppose State B has one renewal community, RC1. In 2004, RC1 allocated its entire $12 million commercial revitalization expenditure ceiling as follows:

(a) on June 1, 2004, RC1 made a carryover allocation of $4 million for a qualified revitalization building, QRB1, in RC1, but the taxpayer failed to meet the 10-percent basis requirement by December 31, 2004, and notified RC1 in 2004 that the 10-percent basis requirement was not met; (b) on September 15, 2004, RC1 made a placed-in-service year allocation of $3 million for another qualified revitalization building, QRB2, in RC1, but the taxpayer notified RC1 on February 1, 2005, that QRB2 was not placed in service by December 31, 2004; and (c) on December 16, 2004, RC1 made a carryover allocation of $5 million for a third qualified revitalization building, QRB3, in RC1, but the taxpayer failed to meet the 10-percent basis requirement by June 16, 2005. The June 1, 2004, carryover allocation is not a failed building amount and is treated as not having been made for 2004 and, therefore, is included in the unallocated commercial revitalization expenditure amount for 2004 for RC1 (provided the $4 million was not re-allocated in 2004). The September 15, 2004, placed-in-service year allocation is a failed building amount and is treated as having been made for 2004 and, therefore, is not included in the unallocated commercial revitalization expenditure amount for 2004 for RC1. The December 16, 2004, carryover allocation is a failed building amount and is treated as having been made for 2004 and, accordingly, is not included in the unallocated commercial revitalization expenditure amounts for 2004 for RC1. Therefore, pursuant to sections 3.02(2)(c) and 3.02(3) of this revenue procedure, the unallocated commercial revitalization expenditure amount for 2004 for RC1 is $4 million.

.03 General rules for making a retroactive allocation of the unallocated commercial revitalization expenditure amount.

(1) Retroactive allocation must be made for each building. A separate retroactive allocation of the unallocated commercial revitalization expenditure amount (a "retroactive commercial revitalization expenditure allocation") must be made for each qualified revitalization building, whether new or substantially rehabilitated, placed in service in the expanded area of a renewal community. A retroactive commercial revitalization expenditure allocation is not permitted for a qualified revitalization building that is located outside the expanded area of a renewal community.

(2) Aggregation and carryforward of the unallocated commercial revitalization expenditure amount are not permitted. The unallocated commercial revitalization expenditure amount for any renewal community within a state for any given calendar year may not be allocated, in whole or in part, to another renewal community. If a commercial revitalization agency does not allocate all of the unallocated commercial revitalization expenditure amount for a renewal community for any given calendar year, the unused amounts may not be carried forward to a later year.

(3) Qualified allocation plan must be in effect. A retroactive commercial revitalization expenditure allocation for a qualified revitalization building in the expanded area of a renewal community can only be made if a qualified allocation plan (as defined in § 1400I(e)(2)) is in effect for the placed-in-service year of the building.

.04 Types of retroactive commercial revitalization expenditure allocations allowed.

(1) Unallocated commercial revitalization expenditure amount for 2003. Up to the unallocated commercial revitalization expenditure amount for 2003 for a renewal

community, a commercial revitalization agency may make the following types of a retroactive commercial revitalization expenditure allocation to a taxpayer:

(a) A retroactive placed-in-service year allocation for a qualified revitalization building that was placed in service by the taxpayer in the expanded area of the renewal community in 2002 or 2003; or

(b) A retroactive carryover allocation for a qualified revitalization building that was placed in service by the taxpayer in the expanded area of the renewal community on or before December 31, 2005, provided the taxpayer's basis in the project of which the building is a part, as of June 30, 2004, is more than 10 percent of the taxpayer's reasonably expected basis in the project as of December 31, 2005.

(2) Unallocated commercial revitalization expenditure amount for 2004. Up to the unallocated commercial revitalization expenditure amount for 2004 for a renewal community, a commercial revitalization agency may make the following types of a retroactive commercial revitalization expenditure allocation to a taxpayer:

(a) A retroactive placed-in-service year allocation for a qualified revitalization building that was placed in service by the taxpayer in the expanded area of the renewal community in 2004; or

(b) A retroactive carryover allocation for a qualified revitalization building that will be placed in service by the taxpayer in the expanded area of the renewal community on or before December 31, 2006, provided the taxpayer's basis in the project of which the building is a part, as of June 30, 2005, is more than 10 percent of the taxpayer's reasonably expected basis in the project as of December 31, 2006.

(3) Unallocated commercial revitalization expenditure amount for 2005. Up to the unallocated commercial revitalization expenditure amount for 2005 for a renewal community, a commercial revitalization agency may make the following types of a retroactive commercial revitalization expenditure allocation to a taxpayer:

(a) A retroactive placed-in-service year allocation for a qualified revitalization building that was placed in service by the taxpayer in the expanded area of the renewal community in 2005; or

(b) A retroactive carryover allocation for a qualified revitalization building that will be placed in service by the taxpayer in the expanded area of the renewal community on or before December 31, 2007, provided the taxpayer's basis in the project of which the building is a part, as of June 30, 2006, is more than 10 percent of the taxpayer's reasonably expected basis in the project as of December 31, 2007.

(4) Time and manner of making a retroactive commercial revitalization expenditure allocation. A retroactive commercial revitalization expenditure allocation described in section 3.04(1), (2), or (3) of this revenue procedure:

(a) must be made by the later of the date that is (i) 9 months after the date that HUD approves the expanded area of the renewal community in which the qualified revitalization building is located, or (ii) November 27, 2006; and

(b) is made when an allocation document is completed, signed, and dated by an authorized official of the commercial revitalization agency. For a retroactive placed-in-service year allocation, this allocation document must contain the information described in section 4.02(2) of Rev. Proc. 2003-38, the placed-in-service year of the qualified revitalization building, and the year of the unallocated commercial revitalization

expenditure amount from which the allocation is made (that is, 2003, 2004, or 2005). For a retroactive carryover allocation, the allocation document must contain the information described in section 6.02(2) of Rev. Proc. 2003-38 and the year of the unallocated commercial revitalization expenditure amount from which the allocation is made (that is, 2003, 2004, or 2005). The agency must send a copy of the allocation document to the taxpayer receiving the retroactive commercial revitalization expenditure allocation no later than 60 calendar days following the date on which the allocation document is completed, signed, and dated by an authorized official of the commercial revitalization agency. Neither the original nor a copy of the allocation document is to be sent to the Internal Revenue Service.

.05 HUD approval of expanded area after 2005. If HUD approves an expanded area of a renewal community after 2005 pursuant to § 1400E(g), the commercial revitalization agency for that renewal community may be unable (due to time constraints), in the same calendar year in which HUD approval was made (the "HUD approval year"), to make a commercial revitalization expenditure allocation under section 4 or 6 of Rev. Proc. 2003-38 to a qualified revitalization building placed in service in the expanded area of that renewal community in the HUD approval year. In this case, the commercial revitalization agency may make a retroactive allocation of the unallocated commercial revitalization expenditure amount for that renewal community for the same year in which HUD approved the expanded area by following the rules in sections 3.02(2)(d), 3.02(3), 3.03, 3.04(3), and 3.04(4) of this revenue procedure, except that: (1) the year "2005" in sections 3.02(2)(d) and 3.04(3) is replaced with the HUD approval year, (2) the years "2002, 2003, 2004, or 2005" in section 3.02(3) are

replaced with the HUD approval year, (3) the date “December 31, 2007” in section 3.04(3)(b) is replaced with December 31st of the second calendar year following the HUD approval year, and (4) the date “June 30, 2006” in section 3.04(3)(b) is replaced with June 30th of the calendar year following the HUD approval year.

For example, suppose State C has one renewal community, RC1. In October 2006, HUD approves the expanded area of RC1. Because the expanded area was approved by HUD late in the calendar year, RC1 is unable to make allocations in 2006 to any qualified revitalization building placed in service in 2006 in its expanded area. However, in 2006, RC1 allocated $10 million of its $12 million commercial revitalization expenditure ceiling for 2006 to qualified revitalization buildings placed in service in the original boundaries of RC1. Assuming there is not any failed building amount attributable to 2006, RC1’s unallocated commercial revitalization expenditure amount for 2006 is $2 million. In accordance with this section 3.05 and section 3.04(3) of this revenue procedure, RC1 may allocate this $2 million to any qualified revitalization building that either (1) was placed in service by a taxpayer in the expanded area of RC1 in 2006, or (2) will be placed in service by a taxpayer in the expanded area of RC1 on or before December 31, 2008, provided the taxpayer’s basis in the project of which the building is a part, as of June 30, 2007, is more than 10 percent of the taxpayer’s reasonably expected basis in the project as of December 31, 2008. RC1 must make this allocation in accordance with section 3.04(4) of this revenue procedure.

SECTION 4. COMMERCIAL REVITALIZATION DEDUCTION ELECTION FOR A QUALIFIED REVITALIZATION BUILDING IN THE EXPANDED AREA

.01 Return already filed for the placed-in-service year of a qualified revitalization building in the expanded area.

(1) In general. If a taxpayer receives a retroactive commercial revitalization expenditure allocation made in accordance with section 3 of this revenue procedure for a qualified revitalization building that was placed in service by the taxpayer in the expanded area of a renewal community and the taxpayer filed the federal tax return for the placed-in-service year of that building on or before the date the taxpayer received the retroactive commercial revitalization expenditure allocation, the taxpayer must make the commercial revitalization deduction election provided by § 1400I(a) for the building within the time and in the manner described in section 4.01(2) of this revenue procedure. The election is made by each person owning the qualified revitalization building (for example, by the member of a consolidated group, the partnership, or the S corporation that owns the building). The election only applies to the extent that a retroactive commercial revitalization expenditure allocation was timely made to the building by the commercial revitalization agency of the state in which the building is located. If the amount of that allocation exceeds the amount properly chargeable to a capital account for the building, the qualified revitalization expenditures eligible for the commercial revitalization deduction election are limited to the amount properly chargeable to a capital account for the building.

(2) Time and manner for making the election. A taxpayer described in section 4.01(1) of this revenue procedure may make the commercial revitalization deduction election for the qualified revitalization building in the renewal community's expanded area either by:

(a) filing an amended federal tax return(s) (or a qualified amended return(s) under Rev. Proc. 94-69, 1994-2 C.B. 804, if applicable) for the placed-in-service year and all subsequent affected taxable year(s), provided that the placed-in-service year and all subsequent taxable year(s) are open under the period of limitations for assessment under § 6501(a). The amended federal tax return(s) (or qualified amended return(s)) must include the adjustment to taxable income for the commercial revitalization deduction election and any collateral adjustments to taxable income or to the tax liability (for example, the amount of depreciation claimed in that taxable year under § 168 for the qualified revitalization building to which the election pertains). The amended federal tax return(s) (or qualified amended return(s)) should include the statement "Filed Pursuant to Rev. Proc. 2006-16" at the top of the amended return(s) (or qualified amended return(s)). In accordance with § 1.446-1(e)(3)(ii), section 2.04 of Rev. Proc. 2002-9, 2002-1 C.B. 327 (as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, amplified, clarified, and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432, and modified by Rev. Proc. 2004-11, 2004-1 C.B. 311), and Rev. Rul. 90-38, 1990-1 C.B. 57, the Commissioner specifically grants consent to a taxpayer complying with the provisions of this section 4.01(2)(a) to make a retroactive change in method of accounting for the commercial revitalization deduction allowed under § 1400I(a); or

(b) obtaining the consent of the Commissioner under § 446(e) to change the taxpayer's method of accounting for the commercial revitalization deduction allowed under § 1400I(a) by filing a Form 3115, Application for Change in Accounting Method, with the taxpayer's federal tax return for the taxable year that includes the date on which

the commercial revitalization agency makes the retroactive commercial revitalization expenditure allocation, or with the taxpayer's federal tax return for the first taxable year succeeding the taxable year that included the date on which the commercial revitalization agency made the retroactive commercial revitalization expenditure allocation. To obtain this consent, the taxpayer must follow the automatic change in method of accounting provisions in Rev. Proc. 2002-9 or any successor, with the following modifications:

(i) The scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply; and

(ii) For purposes of section 6.02(4)(a) of Rev. Proc. 2002-9, the taxpayer should include on line 1a of the Form 3115 the designated automatic accounting method change number for the change in method of accounting for depreciation made under this section 4. This number for this method change is 97.

.02 Return not filed for the placed-in-service year of a qualified revitalization building in the expanded area. If a taxpayer receives a retroactive commercial revitalization expenditure allocation made in accordance with section 3 of this revenue procedure for a qualified revitalization building that was or will be placed in service by the taxpayer in the expanded area of a renewal community and the taxpayer files the federal tax return for the placed-in-service year of that building after the date the taxpayer received the retroactive commercial revitalization expenditure allocation, the taxpayer must make the commercial revitalization deduction election provided by § 1400I(a) for the building by following the procedures in sections 7.01 and 7.02 of Rev. Proc. 2003-38.

.03 Other rules applicable to the commercial revitalization deduction election. Sections 7.03, 7.04, and 7.05 of Rev. Proc. 2003-38 (as modified by this revenue procedure) also apply to a taxpayer described in, or to the commercial revitalization deduction election made in accordance with, section 4.01 or 4.02 of this revenue procedure.

SECTION 5. SECTION 179 ELECTION FOR QUALIFIED RENEWAL PROPERTY PLACED IN SERVICE BY A TAXPAYER IN THE EXPANDED AREA IN 2002, 2003, 2004, OR 2005

An item of section 179 property (as defined in § 179(d)(1)) that is also qualified renewal property and is placed in service in the expanded area of a renewal community is eligible for the increased § 179 expensing provided by § 1400J. If this property is placed in service by a taxpayer in 2002, 2003, 2004, or 2005, and the taxpayer wants to make an election under § 179 to use the increased § 179 expensing, the taxpayer makes the election under § 179 (or, if necessary, revokes an election previously made under § 179) by filing an amended federal tax return(s) for the placed-in-service year and any affected subsequent taxable year, provided that the placed-in-service year and any affected subsequent taxable year(s) are open under the period of limitations for assessment under § 6501(a). This election (or the revocation of the election) must be made in the manner described in § 1.179-5(c)(2) (or in § 1.179-5(c)(3) in the case of a revocation of a previously made § 179 election).

SECTION 6. EXCLUSION FROM GROSS INCOME FOR A QUALIFIED COMMUNITY ASSET IN THE EXPANDED AREA OF A RENEWAL COMMUNITY

Any qualified capital gain (as defined in § 1400F(c)) from the sale or exchange of a qualified community asset (as defined in § 1400F(b)) that is in the expanded area of a renewal community and that is held for more than 5 years is excluded from gross income pursuant to § 1400F.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective: (1) under § 1400I, for a qualified revitalization building placed in service after December 31, 2001, in the expanded area of a renewal community; (2) under § 1400J, for a qualified renewal property placed in service after December 31, 2001, in the expanded area of a renewal community; and (3) under § 1400F, for a qualified community asset acquired after December 31, 2001, in the expanded area of a renewal community that is held for more than 5 years.

SECTION 8. EFFECT ON OTHER DOCUMENTS

.01 Rev. Proc. 2002-9 is modified and amplified to include the automatic change in method of accounting provided under section 4.01(2)(b) of this revenue procedure in the APPENDIX of Rev. Proc. 2002-9.

.02 Section 7.05 of Rev. Proc. 2003-38 is modified to read as follows: “If a taxpayer does not make the commercial revitalization deduction election for a qualified revitalization building within the time and in the manner prescribed in section 7.02 of this revenue procedure, the amount of depreciation allowable for that property must be determined under ' 168 for the placed-in-service year and for all subsequent years. Thus, the commercial revitalization deduction election cannot be made by the taxpayer in any manner other than as set forth in section 7.02 of this revenue procedure (for example, through a request under ' 446(e) to change the taxpayer=s method of

accounting), except as otherwise expressly provided by the Internal Revenue Code, the regulations under the Code, or other guidance published in the Internal Revenue Bulletin. ”

SECTION 9. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2001.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in section 3.04 of this revenue procedure. This information is required to obtain an allocation of commercial revitalization expenditure amounts for a qualified revitalization building in the expanded area of a renewal community. This information will be used by the Service to verify that the taxpayer is entitled to the commercial revitalization deduction. The collection of information is required to obtain a benefit. The likely respondents are state or local governments and business or other for-profit institutions.

The estimated total annual reporting burden is 150 hours.

The estimated annual burden per respondent varies from 1 to 4 hours, depending on individual circumstances, with an estimated average of 2.5 hours. The estimated number of respondents is 60.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Charles Magee of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Magee at (202) 622-3110 (not a toll-free call). For information regarding the renewal community employment credit under § 1400H, contact Karin Loverud at (202) 622-6080 (not a toll-free number).