

facility is completed or acquired and a depreciation deduction is allowable under section 167 (including an additional first-year depreciation allowance under former section 179; for a facility that is acquired by the taxpayer after September 10, 2001, and that is qualified property under section 168(k)(2) or § 1.168(k)-1T or qualified New York Liberty Zone property under section 1400L(b) or § 1.1400L(b)-1T, the additional first year depreciation deduction under section 168(k)(1) or 1400L(b), as applicable; and for a facility that is acquired by the taxpayer after May 5, 2003, and that is 50-percent bonus depreciation property under section 168(k)(4) or § 1.168(k)-1T, the additional first year depreciation deduction under section 168(k)(4) with respect to the facility for the taxable year in which it is completed or acquired, the amount determined under paragraph (b)(1) of this section shall be reduced by an amount equal to the amount of the depreciation deduction allowed or allowable, whichever is greater, multiplied by a fraction the numerator of which is the amount determined under paragraph (b)(1) of this section, and the denominator of which is the facility's total cost. The additional first-year allowance for depreciation under former section 179 will be allowable only for the taxable year in which the facility is completed or acquired and only if the taxpayer elects to begin the amortization deduction under section 169 with the taxable year succeeding the taxable year in which such facility is completed or acquired. For a facility that is acquired by a taxpayer after September 10, 2001, and that is qualified property under section 168(k)(2) or § 1.168(k)-1T or qualified New York Liberty Zone property under section 1400L(b) or § 1.1400L(b)-1T, see § 1.168(k)-1T(f)(4) or § 1.1400L(b)-1T(f)(4), as applicable, with respect to when the additional first year depreciation deduction under section 168(k)(1) or 1400L(b) is allowable. For a facility that is acquired by a taxpayer after May 5, 2003, and that is 50-percent bonus depreciation property under section 168(k)(4) or § 1.168(k)-1T, see § 1.168(k)-1T(f)(4) with respect to when the additional first year depreciation deduction under section 168(k)(4) is allowable.

(c) through (f) For further guidance, see § 1.169-3(c) through (f).

(g) *Effective date for qualified property, 50-percent bonus depreciation property, and qualified New York Liberty Zone property.* This section applies to a certified pollution control facility. This section also applies to a certified pollution control facility that is qualified property under section 168(k)(2) or qualified New York Liberty Zone property under section 1400L(b) acquired by a taxpayer after September 10, 2001, and to a certified pollution control facility that is 50-percent bonus depreciation property under section 168(k)(4) acquired by a taxpayer after May 5, 2003. This section expires on September 4, 2003.

[T.D. 9091, 68 FR 53004, Sept. 8, 2003; 68 FR 63734, Nov. 10, 2003]

§ 1.169-4 Time and manner of making elections.

(a) *Election of amortization—(1) In general.* Under section 169(b), an election by the taxpayer to take an amortization deduction with respect to a certified pollution control facility and to begin the 60-month amortization period (either with the month following the month in which the facility is completed or acquired, or with the first month of the taxable year succeeding the taxable year in which such facility is completed or acquired) shall be made by a statement to that effect attached to its return for the taxable year in which falls the first month of the 60-month amortization period so elected. Such statement shall include the following information (if not otherwise included in the documents referred to in subdivision (ix) of this subparagraph):

(i) A description clearly identifying each certified pollution control facility for which an amortization deduction is claimed;

(ii) The date on which such facility was completed or acquired (see paragraph (b)(2)(iii) of § 1.169-2);

(iii) The period referred to in paragraph (a)(6) of § 1.169-2 for the facility as of the date the property is placed in service;

(iv) The date as of which the amortization period is to begin;

(v) The date the plant or other property to which the facility is connected began operating (see paragraph (a)(5) of § 1.169-2);

(vi) The total costs and expenditures paid or incurred in the acquisition, construction, and installation of such facility;

(vii) A description of any wastes which the facility will recover during the course of its operation, and a reasonable estimate of the profits which will be realized by the sale of such wastes whether pollutants or otherwise, over the period referred to in paragraph (a)(6) of § 1.169-2 as to the facility. Such estimate shall include a schedule setting forth a detailed computation illustrating how the estimate was arrived at including every element prescribed in the definition of estimated profits in paragraph (d)(2) of § 1.169-2;

(viii) A computation showing the amortizable basis (as defined in § 1.169-3) of the facility as of the first month for which the amortization deduction provided for by section 169(a) is elected; and

(ix)(a) A statement that the facility has been certified by the Federal certifying authority, together with a copy of such certification, and a copy of the application for certification which was filed with and approved by the Federal certifying authority or (b), if the facility has not been certified by the Federal certifying authority, a statement that application has been made to the proper State certifying authority (see paragraph (c)(2) of § 1.169-2) together with a copy of such application and (except in the case of an election to which subparagraph (4) of this paragraph applies) a copy of the application filed or to be filed with the Federal certifying authority.

If subdivision (ix)(b) of this subparagraph applies, within 90 days after receipt by the taxpayer, the certification from the Federal certifying authority shall be filed by the taxpayer with the district director, or with the director of the internal revenue service center, with whom the return referred to in this subparagraph was filed.

(2) *Special rule.* If the return for the taxable year in which falls the first month of the 60-month amortization

period to be elected is filed before November 16, 1971, without making the election for such year, then on or before December 31, 1971 (or if there is no State certifying authority in existence on November 16, 1971, on or before the 90th day after such authority is established), the election may be made by a statement attached to an amended income tax return for the taxable year in which falls the first month of the 60-month amortization period so elected. Amended income tax returns or claims for credit or refund must also be filed at this time for other taxable years which are within the amortization period and which are subsequent to the taxable year for which the election is made. Nothing in this paragraph should be construed as extending the time specified in section 6511 within which a claim for credit or refund may be filed.

(3) *Other requirements and considerations.* No method of making the election provided for in section 169(a) other than that prescribed in this section shall be permitted on or after May 18, 1971. A taxpayer which does not elect in the manner prescribed in this section to take amortization deductions with respect to a certified pollution control facility shall not be entitled to such deductions. In the case of a taxpayer which elects prior to May 18, 1971, the statement required by subparagraph (1) of this paragraph shall be attached to its income tax return for either its taxable year in which December 31, 1971, occurs or its taxable year preceding such year.

(4) *Elections filed before February 29, 1972.* If a statement of election required by subparagraph (1) of this paragraph is attached to a return (including an amended return referred to in subparagraph (2) of this paragraph) filed before February 29, 1972, such statement of election need not include a copy of the Federal application to be filed with the Federal certifying authority but a copy of such application must be filed no later than February 29, 1972, by the taxpayer with the district director, or with the director of the internal revenue service center, with whom the return or amended return referred to in this subparagraph was filed.

(b) *Election to discontinue or revoke amortization*—(1) *Election to discontinue.* An election to discontinue the amortization deduction provided by section 169(c) and paragraph (a)(1) of §1.169-1 shall be made by a statement in writing filed with the district director, or with the director of the internal revenue service center, with whom the return of the taxpayer is required to be filed for its taxable year in which falls the first month for which the election terminates. Such statement shall specify the month as of the beginning of which the taxpayer elects to discontinue such deductions. Unless the election to discontinue amortization is one to which subparagraph (2) of this paragraph applies, such statement shall be filed before the beginning of the month specified therein. In addition, such statement shall contain a description clearly identifying the certified pollution control facility with respect to which the taxpayer elects to discontinue the amortization deduction, and, if a certification has previously been issued, a copy of the certification by the Federal certifying authority. If at the time of such election a certification has not been issued (or if one has been issued it has not been filed as provided in paragraph (a)(1) of this section), the taxpayer shall file, with respect to any taxable year or years for which a deduction under section 169 has been taken, a copy of such

certification within 90 days after receipt thereof. For purposes of this paragraph, notification to the Secretary or his delegate from the Federal certifying authority that the facility no longer meets the requirements under which certification was originally granted by the State or Federal certifying authority shall have the same effect as a notice from the taxpayer electing to terminate amortization as of the month following the month such facility ceased functioning in accordance with such requirements.

(2) *Revocation of elections made prior to May 18, 1971.* If on or before May 18, 1971, an election under section 169(a) has been made, such election may be revoked (see paragraph (a)(1) of §1.169-1) by filing on or before August 16, 1971, a statement of revocation of an election under section 169(a) in accordance with the requirements in subparagraph (1) of this paragraph for filing a notice to discontinue an election. If such election to revoke is for a period which falls within one or more taxable years for which an income tax return has been filed, amended income tax returns shall be filed for any such taxable years in which deductions were taken under section 169 on or before August 16, 1971.

[T.D. 7116, 36 FR 9016, May 18, 1971, as amended by T.D. 7135, 36 FR 14183, July 31, 1971; 36 FR 24995, Dec. 28, 1971]