

§ 105-153.6. Adjustments when State decouples from federal accelerated depreciation and expensing.

(a) **Special Accelerated Depreciation.** – A taxpayer who takes a special accelerated depreciation deduction for that property under section 168(k) or 168(n) of the Code must add to the taxpayer's federal taxable income or adjusted gross income, as appropriate, eighty-five percent (85%) of the amount taken for that year under those Code provisions. For taxable years before 2012, the taxpayer must add the amount to the taxpayer's federal taxable income. For taxable year 2012 and after, the taxpayer must add the amount to the taxpayer's adjusted gross income. A taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

(b) **2009 Depreciation Exception.** – A taxpayer who placed property in service during the 2009 taxable year and whose North Carolina taxable income for the 2009 taxable year reflected a special accelerated depreciation deduction allowed for the property under section 168(k) of the Code must add eighty-five percent (85%) of the amount of the special accelerated depreciation deduction to its federal taxable income for the 2010 taxable year. A taxpayer is allowed to deduct this add-back under subsection (a) of this section as if it were for property placed in service in 2010.

(c) **Section 179 Expense.** – For purposes of this subdivision, the definition of section 179 property has the same meaning as under section 179 of the Code. A taxpayer who places section 179 property in service during a taxable year must add to the taxpayer's federal taxable income or adjusted gross income, as appropriate, eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code exceeds the dollar and investment limitation for that taxable year. For taxable years before 2012, the taxpayer must add the amount to the taxpayer's federal taxable income. For taxable year 2012 and after, the taxpayer must add the amount to the taxpayer's adjusted gross income. For taxable years 2010, 2011, and 2012, the dollar limitation is two hundred and fifty thousand dollars (\$250,000) and the investment limitation is eight hundred thousand dollars (\$800,000). For taxable years beginning on or after 2013, the dollar limitation is twenty-five thousand dollars (\$25,000) and the investment limitation is two hundred thousand dollars (\$200,000).

A taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

(d) **Asset Basis.** – The adjustments made in this section do not result in a difference in basis of the affected assets for State and federal income tax purposes, except as modified in subsection (e) of this section.

(e) **Bonus Asset Basis.** – In the event of an actual or deemed transfer of an asset occurring on or after January 1, 2013, wherein the tax basis of the asset carries over from the transferor to the transferee for federal income tax purposes, the transferee must add any remaining deductions allowed under subsection (a) of this section to the basis of the transferred asset and depreciate the adjusted basis over any remaining life of the asset. Notwithstanding the provisions of subsection (a) of this section, the transferor and any owner in a transferor are not allowed any remaining future bonus depreciation deductions associated with the transferred asset. This subsection applies only to the extent that each transferor or owner in a transferor that added bonus depreciation to its federal taxable income or adjusted gross income associated with the transferred asset certifies in writing to the transferee, that the transferor or owner in a transferor will not take any remaining future bonus depreciation deduction associated with the transferred asset.

(f) **Prior Transactions.** – For any transaction meeting both the requirements of subsection (e) of this section prior to January 1, 2013, and the conditions of this subsection, the

transferor and transferee can make an election to make the basis adjustment allowed in that subsection on the transferee's 2013 tax return. If the asset has been disposed of or has no remaining useful life on the books of the transferee, the remaining bonus depreciation deduction may be allowed on the transferee's 2013 tax return. For this subsection to apply, the following conditions must be met:

- (1) The transferor or any owner in a transferor has not taken the bonus depreciation deduction on a prior return.
- (2) The transferor is not allowed any remaining future bonus depreciation deductions associated with the transferred asset and each transferor or owner in a transferor certifies in writing to the transferee that the transferor or owner in a transferor will not take any remaining deductions allowed under subsection (a) of this section for tax years beginning on or after January 1, 2013, for depreciation associated with the transferred asset.
- (3) The amount of the basis adjustment under this subsection is limited to the total remaining future bonus depreciation deductions forfeited by the transferor and any owner in the transferor at the time of the transfer.

(g) **Tax Basis.** – For transactions described in subsection (e) or (f) of this section, adjusted gross income must be increased or decreased to account for any difference in the amount of depreciation, amortization, or gains or losses applicable to property that has been depreciated or amortized by use of a different basis or rate for State income tax purposes than used for federal income tax purposes.

(h) **Definitions.** – The following definitions apply in this section:

- (1) **Owner in a transferor.** – One or more of the following of a transferor:
 - a. A partner, shareholder, or member.
 - b. A beneficiary subject to tax under Part 2 or 3 of Article 4 of this Chapter of a transferor.
- (2) **Transferor.** – An individual, partnership, corporation, S Corporation, limited liability company, or an estate or trust that does not fully distribute income to its beneficiaries. (2013-316, s. 1.1(d); 2013-414, s. 58(a); 2014-3, s. 2.1(c); 2015-2, s. 1.2(b); 2015-6, s. 2.8(b); 2016-6, s. 2(b).)