

**Patton v. Commissioner [I.R.C. §55]**  
**(§179 expensing election cannot be changed after tax return filing)**

**Facts.** The taxpayer, a self-employed welder, **reported a business loss for 1995 and was unable to benefit from his §179 election** to expense a \$4,100 asset. On audit, the IRS determined that due to unreported income the business actually earned a profit. The IRS also recharacterized as depreciable assets three items that taxpayer had expensed as materials and supplies. The IRS denied the taxpayer's request to revoke, amend, or modify his I.R.C. §179 election to expense the three assets.

**Issue.** Whether IRS abused its discretion in refusing to grant consent to taxpayer to revoke (modify or change) his election to expense depreciable business assets under I.R.C. §179.

**Analysis.** An I.R.C. **§179 election must be made on the taxpayer's first income tax return** (whether or not the return is timely) or on an amended return filed within the time prescribed by law (including extensions) for filing the original return for such year [*Genck v. Commissioner*, 75 T.C.M. (CCH) 1984 (1998); I.R.C. §179(c)(1)(B); and Treas. Reg. §1.179-5(a)]. An election made under I.R.C. §179 and any specifications contained in such election may not be revoked (modified or changed) without the IRS's consent [I.R.C. §179(c)(2); *King v. Commissioner*, 60 T.C.M. (CCH) 1048 (1990)].

The taxpayer argued that his dilemma was caused by the IRS, since it was IRS' determination after the taxpayer could make a timely election, that necessitated taxpayer's request for consent to revoke. The court noted that the taxpayer sought to capitalize on his initial misclassification by reducing taxable income that was caused by the unreported business receipts that the IRS discovered. Accordingly, the court concluded it was taxpayer's mischaracterization that precipitated the need for change.

**Holding.** The Tax Court held that IRS did not abuse its discretion in refusing to consent to taxpayer's request to revoke (modify) the 1995 election under I.R.C. §179.

[*Patton v. Commissioner*, 116 T.C. 206 (2001)]