

Treasury Decision 8124, 26 CFR, IRC Sec(s). 42

Feb 05, 1987

AGENCY:

Internal Revenue Service, Treasury.

ACTION:

Temporary regulations.

SUMMARY:

This document contains temporary regulations relating to the time and manner of making certain elections under the Tax Reform Act of 1986. These regulations provide guidance to persons making these elections.

DATES:

These regulations are effective February 5, 1987. Except as otherwise provided, the regulations apply to elections made after October 22, 1986.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to certain elections under various sections of the Internal Revenue Code of 1986 and the Tax Reform Act of 1986 (the Act). These regulations are added to the Temporary Regulations-Elections Under Various Public Laws (26 CFR Part 5h). The temporary regulations provided by this document will remain in effect until superseded by later temporary or final regulations relating to these elections.

Explanation of Provisions

Section 5h.5(a)(1) lists certain elections that are provided by the Act and are addressed in this regulation. The general rules (and exceptions thereto) regarding the time for making the listed elections are provided in §5h.5(a)(2). The general rules (and exceptions thereto) regarding the manner of making the listed elections are provided in §5h.5(a)(3). Special rules regarding the time and manner for making certain elections listed in §5h.5(a)(1) are contained in paragraphs (b) through (i) of §5h.5. Election provisions provided by the Act, but not addressed in this regulation, will be addressed in other regulation projects.

Section 5h.5(j) provides that additional information may be required from taxpayers after an election has been filed.

Special Analysis

The Commissioner of Internal Revenue has determined that this temporary regulation is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545-0982.

Drafting Information

The principal author of these regulations is Joel S. Rutstein of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

List of Subjects

26 CFR Part 5h

Income taxes, Elections under various public laws, Deficit Reduction Act of 1984, Tax Reform Act of 1986.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulation

Accordingly, 26 CFR Parts 5h and 602 are amended as follows:

PART 5h- [AMENDED]

Paragraph 1. The authority for Part 5h continues to read:

Authority:

26 U.S.C. 7805, section 5h.5 also issued under 26 U.S.C. 42(f)(1), 42(g)(1), 42(i)(2), 42(j)(5), 48(b)(2), 56(f)(3)(B), 83(c)(3), 141(b)(9), 142(d)(1), 142(d)(4)(B), 143(k)(9)(D)(iii), 154(d), 147(b)(4)(A), 165(l)(1), 168(b)(5),

168(f)(1), 168(g)(7), 168(h)(6)(F)(ii), 216(b)(3), 263(i), 263A(d)(3), 382(l)(5)(H), 448(d)(4), 453C(b)(2)(B), 453C(e)(4), 468B, 469(j)(9), 474, 585(c)(3)(A)(iii)(I), 585(c)(4), 616(d), 617(h), 1059(c)(4), 2632(b)(3), 2652(a)(3), 3121(w)(2), 4982(e)(4), and 7701(b). Section 5h.5 also issued under Pub. L. 99-514 sections 203(a)(1)(B), 204(e), 243(a), 243(b), 311(d)(2), 646, 801(d)(2), 806(e)(2)(c), 905(c), 1704(b), 1801(a), 1802(a), and 1804(e)(4).

Par. 2. A new §5h.5 is added immediately after §5h.4 to read as follows:

§5h.5 Time and manner of making the elections under the Tax Reform Act of 1986.

(a) Miscellaneous elections-(1) Elections to which this paragraph applies. This paragraph applies to the elections set forth below provided under the Tax Reform Act of 1986 (the Act). General rules regarding the time for making the elections are provided in paragraph (a)(2) of this section. General rules regarding the manner for making certain elections are provided in paragraph (a)(3) of this section. Special rules regarding the time and manner for making certain elections are contained in paragraphs (a)-(i) of this section. If a special rule applies to one of the elections listed below, a cross-reference to the special rule is shown in brackets at the end of the description of the "Availability of Election." Paragraph (j) of this section provides that additional information with respect to elections may be required by future regulations or revenue procedures. [Note: The following TABLE/FORM is too wide to be displayed on one screen. You must print it for a meaningful review of its contents. The table has been divided into multiple pieces with each piece containing information to help you assemble a printout of the table. The information for each piece includes: (1) a three line message preceding the tabular data showing by line # and character # the position of the upper left-hand corner of the piece and the position of the piece within the entire table; and (2) a numeric scale following the tabular data displaying the character positions.]

 ***** This is piece 1. -- It begins at character 1 of table line 1.

 ***** Section of
 Act Section of Code Description of Election -----
 ----- 201(a) 168(b)(5) Election to depreciate property
 using the straight line method of recovery with respect to one or more classes of
 property for any taxable year 201(a) 168(f)(1) Election to
 exclude certain property from the accelerated cost recovery system 201(a)
 168(g)(7) Election to use alternative depreciation system with respect to
 one or more classes of property for any taxable year (except for residential rental or
 non-residential real property where the election may be made separately with
 respect to each property) 201(a), 1802(a) 168(h)(6)(F)(ii), 168(j) (as
 in effect before October 22, 1986) Election by a tax-exempt controlled
 entity to treat any gain recognized by the tax-exempt parent on any disposition of an
 interest in the tax-exempt controlled entity (and to treat any dividends or interest
 received or accrued from the tax-exempt controlled entity) as unrelated business
 taxable income under Code section 511 in order for the tax-exempt controlled entity
 to not be treated as a tax-exempt entity (or as a successor to a tax-exempt entity)
 203(a)(1)(B) .. ----- Election to apply Act section 201
 (including all elections within section 201) 204(e) .. -----

Election to have Act section 201 either (i) not apply to any property placed in service during 1987 or 1988 which is replacement property for property lost, damaged or destroyed in a flood which occurred 11-3-86 through 11-7-85 and which was declared a natural disaster area by the President of the United States, or (ii) apply to all such replacement property placed in service during 1985 or 1986 243(a)

----- Election to begin the 60 month amortization period with the first month of the taxpayer's first taxable year beginning after 11-19-82 in lieu of the 11-19-82 date or the bus operating authority acquisition date 243(b)

----- Election to begin the 60 month amortization period on the first month of the taxpayer's first taxable year beginning after the deregulation month in lieu of the deregulation month .. 243 (a), (b) .. ----- Election by a qualified corporate taxpayer to allocate a portion of the cost basis of a qualified acquiring corporation in the stock of an acquired corporation to the basis of the authority 252(a) 42(f)(1) Election concerning beginning of credit period for low-income housing credit 252(a) 42(g)(1) Election concerning qualified low-income housing project to either satisfy the 20-50 or the 40-60 occupancy test 252(a) 42(i)(2) Election to reduce eligible basis by outstanding balance of Federal loan subsidy 252(a) 42(j)(5) Election to have certain partnerships treated as the taxpayer eligible for low-income housing credit 311(d)(2)

----- Revocation of prior election under Code section 631(a)..... 411(b)(1) 263(i) For intangible drilling and development costs paid or incurred with respect to an oil, gas, or geothermal well located outside the United States, election to include such costs in adjusted basis for purposes of computing the amount of any deduction under Code section 611 (without regard to section 613) 411(b)(2) 616(d) For expenditures paid or incurred with respect to the development of a mine or other natural deposit (other than an oil, gas, or geothermal well) located outside the United States, election to include such expenditures paid or incurred during the taxable year for which made in adjusted basis for purposes of computing the amount of any deduction under Code section 611 (without regard to section 613) 411(b)(2) 617(h) For expenditures paid or incurred before the development stage for the purpose of ascertaining the existence, location, extent or quality of any deposit of ore or other mineral deposit (other than an oil, gas or geothermal well) located outside the United States, election to include all such expenditures, paid or incurred during the taxable year with respect to any such deposit, in adjusted basis for purposes of computing the amount of any deduction under Code section 611 (without regard to section 613) 501(a) 469(j)(9) Election to increase basis of property by amount of disallowed credit for purposes of determining gain or loss from a disposition of property used in a passive activity 614(b) 1059(c)(4) Election to determine whether a dividend is extraordinary by reference to the fair market value of the share of stock with respect to which the dividend was received 621(a) 382(l)(5)(H) Election by certain new loss corporations not to apply the special rules of Code section 382(l)(5) concerning inapplicability of the section 382(a) limitation on corporate net operating loss carryforwards where the old loss corporation is involved in a Title 11-type case 644(d) 216(b)(3) Election by a cooperative housing corporation to allocate real estate taxes or interest or both to each tenant-stockholder's dwelling unit in a manner which reasonably reflects the cost to the corporation of the tenant-stockholder's dwelling unit 646

----- Election by an entity to be treated as a trust under the Internal Revenue Code if such entity was created in 1906 as a common law trust and governed by the trust laws of the State of Minnesota, receives royalties from iron ore leases, and income interests in the

entity are publicly traded on a national stock exchange 651

4982(e)(4) Election by a regulated investment company to use taxable years ending on 11-30 or 12-31 for purposes of computing capital gain net income under Code section 4982 701(a) 56(f)(3)(B) Election to have amount of net book income be equal to amount earnings and profits 801(a) 448(d)(4) Election of common parent of an affiliated group that all members of such group be treated as one taxpayer if substantially all the activities of all members of the affiliated group involve performance of services in the same field 801(d)(2) ----- Election to continue using the cash method of accounting for loans, leases and related party transactions 802 474 Election by certain small businesses to use the simplified dollar-value LIFO method 803(a) 263A(d)(3) Election to have rules of Code section 263A (relating to capitalization and inclusion in inventory costs of certain expenses) not apply to any plant or animal produced in any farming business conducted by the electing taxpayer ... 806(e)(2)(C) .. ----- Election to have net income for the short taxable year of a partnership or S corporation which results from the required change in accounting period included entirely in income for such short taxable year .. ----- Election to reduce partnership or S corporation income for the short taxable year resulting from a required change in accounting period under section 806 of the Act by an unamortized adjustment amount existing as of October 22, 1986, where such adjustment was required to effectuate a previous accounting period change under Rev. Proc. 72-51, 1972-2 C.B. 832 or Rev. Proc. 83-25, 1983-1 C.B. 689 811(a) 453C(b)(2)(B) Election to compute adjusted bases using depreciation deduction used under Code section 312(k) . 811(a) 453C(e)(4) Election to have Code section 453C not apply to obligations arising from sales of timeshares and unimproved residential lots to individuals 901(a) 585(c)(3)(A)(iii)(I) .. Election to recapture more than 10% of the bad debt reserve in the first taxable year after the disqualification year 901(a) 585(c)(4) Election to use the "cut-off method" to recapture bad debt reserves 905(a) 165(l)(1) Election to treat amount of reasonably estimated loss on a deposit in insolvent or bankrupt qualified financial institution as a loss described in Code section 165(c)(3) and incurred in the taxable year 905(c) ----- Election to apply Code section 451(f) (relating to treatment of interest on frozen deposits in certain financial institutions) 1301(b) 141(b)(9) Election by issuer of tax-exempt bonds to treat a portion of an issue as a qualified 501(c)(3) bond if such portion would have qualified as a 501(c)(3) bond had it been issued separately 1301(b) 142(d)(1) Election by issuer of tax-exempt bonds for residential rental property to satisfy either the 20-50 or the 40-60 occupancy test 1301(b) 142(d)(4)(B) Election by issuer of tax-exempt bonds for residential rental property to treat the project as a deep rent skewed project 1301(b) 143(k)(9)(D)(iii) Election to treat limited equity cooperative housing as residential rental property and not as owner-occupied housing 1301(b) 145(d) Election by issuer of tax-exempt bonds to have Code section 145 not apply to the issue if the issue is an issue of exempt facility bonds or qualified redevelopment bonds, to which the volume cap applies 1301(b) 147(b)(4)(A) Election by issuer of qualified 501(c)(3) bonds to have such bonds treated as meeting the limitation on maturity requirements of Code section 147(b)(1) if the requirements of section 147(b)(4)(B) are met 1431(a) 2632(b)(3) Election to not allocate generation skipping transfer exemption to a direct skip transfer 1431(a) 2652(a)(3) Election to have qualified terminable interest property election not apply for purposes

of the generation skipping transfer tax 1704(b) -----
 Election to revoke prior election under Code section 1402(e) (relating to exemption from social security taxes for certain clergy) 1801(a) 168(i) (as in effect before October 22, 1986) Election to make finance leasing rules inapplicable to property which would otherwise be subject to them under the transitional rules of section 12(c)(1) of the Tax Reform Act of 1984 1804(e)(4) ----- Election by a common parent of an affiliated group to apply amendments made by the Tax Reform Act of 1984 for taxable years beginning after 12-31-83 1807(a)(7) 468B Election to treat a qualified payment made to a court-ordered fund as a payment made to a designated settlement fund 1809(e)(2) 48(b)(2) Election by lessee and lessor not to apply the rule of Code section 48(b)(2) concerning the date leased property is treated as originally placed in service 1810() (4) 7701(b) Election to be treated as a resident alien . 1879(p)(1) 83(c)(3) Election to treat certain stock acquired upon the exercise of nonqualified stock options as subject to a substantial risk of forfeiture by reason of Code section 83(c)(3) even though the transfer of stock pursuant to such exercise occurred before 1-1-82, the effective date of section 83(c)(3) 1882(c) 3121(w)(2) Election to revoke prior election under Code section 3121(w) (relating to exemption from social security taxes for certain churches and qualified church-controlled organizations) -----

1...+...10...+...20...+...30...+...40...+...50...+...60...

***** This is piece 2. -- It begins at character 64 of table line 1.

***** ----- Availability of Election -----

Property placed in service after 12-31-86. Election must be made for taxable year in which property is placed in service. Election shall apply to all property in the class placed in service during the taxable year for which the election is made. Property placed in service after 12-31-86. Election must be made for taxable year in which property is placed in service. Property placed in service after 12-31-86. Election must be made for taxable year in which property is placed in service. Except for residential rental or non-residential real property, election shall apply to all property in the class placed in service during the taxable year for which the election is made. Property placed in service after 9-27-85, but can apply to property placed in service before such date if the tax-exempt controlled entity so elects. [See paragraph (a)(3)(ii) of this section.] Property placed in service after 7-31-86 and before 1-1-87. (i) Property placed in service during 1987 or 1988; or (ii) property placed in service during 1985 or 1986. Bus operating authorities held on 11/19/82, or acquired after that date under a written contract that was binding on that date. Freight forwarder operating authorities held at the beginning of the 60 month period applicable to the taxpayer (i.e., the deregulation date or the first month of the first taxable year beginning after the deregulation date). For bus operating authorities: authorities held on 11/19/82, or acquired after that date under a written contract that was binding on that date. For freight forwarders: authorities held at the beginning of the 60-month period applicable to the taxpayer. Buildings placed in service after 12-31-86 and before 1-1-90 (before 1-1-91 for buildings described in Code section 42(n)(2)(B)). [See paragraph (b) of this section.] Buildings placed in service after 12-31-86 and before 1-1-90 (before 1-1-91 for buildings described in Code section 42(n)(2)(B)). [See paragraph (b) of this section.] Buildings placed in service after 12-31-86 and before 1-1-90 (before 1-1-91 for buildings described in Code section 42(n)(2)(B)). [See paragraph (b) of this section.] Buildings placed in service after 12-31-86 and before

1-1-90 (before 1-1-91 for buildings described in Code Section 42(n)(2)(B) [See paragraph (b) of this section.] Election for taxable years beginning before 1-1-87 may be revoked for taxable years ending after 12-31-86. Costs paid or incurred after 12-31-86 in taxable years ending after such date. [See paragraph (a)(2)(iii) of this section.] Costs paid or incurred after 12-31-86 in taxable years ending after such date. [See paragraph (a)(2)(iv) of this section.] Costs paid or incurred after 12-31-86 in taxable years ending after such date. [See paragraph (a)(2)(v) of this section.] Taxable years beginning after 12-31-86. [See paragraph (a)(3)(iii) of this section.] Dividends declared after July 18, 1986 in taxable years ending after such date. Ownership changes following either an owner shift involving a 5% shareholder occurring after 12-31-86 or an equity structure shift occurring pursuant to a plan of reorganization adopted after 12-31-86. Taxable years beginning after 12-31-86. [See paragraph (a)(3)(iv) of this section.] The election is effective beginning on first day of the first taxable year beginning after October 22, 1986 and following the year in which the election is made. Such election must be made by the board of trustees of such entity and must be accompanied by a written agreement signed by the board of trustees of the entity. Calendar years beginning after 12-31-86. [See paragraph (a)(2)(vi) of this section.] Taxable years beginning after 12-31-86. Taxable years beginning after 12-31-86. Loans, leases and related party transactions entered into before 9-26-85. Taxable years beginning after 12-31-86. [See paragraph (a)(3)(v) of this section.] Unless consent is obtained from the Commissioner, the first taxable year beginning after 12-31-86 during which the taxpayer engages in a farming business. [See paragraph (c) of this section.] Partner and shareholder taxable years beginning after 12-31-86 with or within which the short taxable year created under section 806 of the Act ends. [See paragraph (d) of this section.] Short taxable years of partnerships or S corporations beginning after 12-31-86 [See paragraph (e) of this section.] Taxable years ending after 12-31-86 with respect to dispositions made after 2-28-86. Taxable years ending after 12-31-86 with respect to dispositions made after 2-28-86. [See paragraph (a)(3)(vi) of this section.] Taxable years beginning after 12-31-86. Taxable years beginning after 12-31-86. Taxable years beginning after 12-31-82. [See paragraph (f) of this section.] Taxable years beginning after 12-31-82 and before 1-1-87. Bonds issued after 8-15-86. [See paragraph (g) of this section.] Bonds issued after 8-15-86. [See paragraph (g) of this section.] Bonds issued after 8-15-86. [See paragraph (g) of this section.] Bonds issued after 8-15-86 and before 1-1-89. [See paragraph (g) of this section.] Bonds issued after 8-15-86. [See paragraph (g) of this section.] Bonds issued after 8-15-86. [See paragraph (g) of this section.] Generation skipping transfers made, or treated as made, after October 22, 1986. Generation skipping transfers made, or treated as made, after October 22, 1986. Remuneration received in taxable years ending on or after October 22, 1986. [See paragraph (h) of this section.] Personal property leased under certain lease agreements effective on or after 1-1-84. [See paragraph (a)(3)(vii) of this section.] Groups which include a corporation which on 6-22-84 is a member of the group which files a consolidated return for such corporation's taxable year which includes 6-22-84. Generally, liabilities arising out of personal injury, death or property damage that are incurred after 7-18-84 under law in effect before the enactment of Code section 461(h). Election is made for the taxable year in which qualified payments are made to a designated settlement fund. Property originally placed in service after 4-11-84 (as determined under Code section 48(b) prior to its amendment by section 114(a) of the Tax Reform Act of 1984). [See paragraph (a)(3)(viii) of this section.] Taxable years beginning after December 31, 1984. [See paragraph (a)(3)(ix) of this section.] Transfers of stock described in section 1879(p)(1) of the Act. [See paragraph (a)(2)(viii) and (a)(3)(x) of this section.] Remuneration paid after 12-31-86 unless such electing church or church-controlled

organization had withheld and paid over all employment taxes due, as if such election had never been in effect during the period from the stated effective date of the election being revoked through 12-31-86. [See paragraph (i) of this section.] ----
----- 64...70....+...80....+..

(2) Time for making elections-(i) In general. Except as otherwise provided in this section, the elections specified in paragraph (a)(1) of this section shall be made by the later of-

(A) The due date (taking extensions into account) of the tax return for the first taxable year for which the election is to be effective, or

(B) April 15, 1987 (in which case the election generally must be made by amended return).

(ii) No extension of time for payment. Payments of tax due shall be made in accordance with chapter 62 of the Code.

(iii) Time for making the election with respect to foreign intangible drilling costs. With respect to the election under Act section 411(b)(1) (Code section 263(i)(2)(A)), the election shall be made on a property-by-property basis for each oil, gas, or geothermal property (as defined in Code section 614). The election shall be made by the due date (taking extensions into account) of the income tax return for the first taxable year in which the taxpayer pays or incurs any cost with respect to the development of such property for which the election is available.

(iv) Time for making the election with respect to foreign development expenditures. With respect to the election under Act section 411(b)(2) (Code section 616(d)(2)(A)), the election shall be made for each mine or other natural deposit not later than the time prescribed by law for filing the income tax return (taking extensions into account) for the taxable year to which such election is applicable.

(v) Time for making the election with respect to foreign exploration expenditures. With respect to the election under Act section 411(b)(2) (Code section 617(h)(2)(A)), the election may be made at any time before the expiration of the period prescribed for filing a claim for credit or refund of the tax imposed by chapter 1 of the Code for the first taxable year for which the taxpayer desires the election to be applicable.

(vi) Time for making certain elections by regulated investment companies. The election under Act section 651 (Code section 4982(e)(4)) shall be made on a statement attached to the form prescribed by the Internal Revenue Service which is used to report and pay the excise tax liability under such section 4982, and shall be filed on or before March 15 of the first calendar year beginning after the end of the first excise tax period for which the election is to be effective. The statement of election under section 4982(e)(4) shall be attached to the prescribed form regardless of whether the regulated investment company is liable for the excise tax imposed by section 4982 for the excise tax period in question.

(vii) Time for making the election with respect to certain nonqualified stock options. The election under section 1879(p)(1) of the Act (Code section 83(c)(3)) shall be made-

(A) By April 21, 1987, in any case in which the operation of any law or rule of law on or before such date would prevent the credit or refund of any overpayment of tax resulting from such election, and

(B) By no later than any date after April 21, 1987 on which the operation of any law or rule of law would prevent the credit or refund of any overpayment of tax resulting from such election.

(3) Manner of making elections-(i) In general. Except as otherwise provided in this section, the elections specified in paragraph (a)(1) of this section shall be made by attaching a statement to the tax return for the taxable year for which the election is to be effective. If because of paragraph (a)(2)(i)(B) of this section the election may be filed after the due date of the tax return for the first taxable year for which the election is to be effective, such statement must be attached to a tax return or amended return for the taxable year to which the election relates. Except as otherwise provided in the return or in the instructions accompanying the return for the taxable year, the statement shall-

(A) Contain the name, address and taxpayer identification number of the electing taxpayer,

(B) Identify the election,

(C) Indicate the section of the Code (or, if the provision is not codified, the section of the Act) under which the election is made,

(D) Specify, as applicable, the period for which the election is being made and/or the property or other items to which the election is to apply, and

(E) Provide any information required by the relevant statutory provisions and any information necessary to show that the taxpayer is entitled to make the election.

(ii) Special rules for making the transitional rule elections with respect to certain tax-exempt controlled entities. The irrevocable election under Act sections 201(a) and 1802(a) (Code sections 168(h)(6)(F)(ii) and 168(j), as in effect before October 22, 1986), shall be made by the tax-exempt controlled entity at the time and in the manner described in paragraphs (a)(2) and (a)(3)(i) of this section. A copy of the election statement filed by the tax-exempt controlled entity shall also be attached to the Federal tax returns (e.g., Form 990 or 5500) of each of the tax-exempt shareholders or beneficiaries of the controlled entity.

(iii) Special rule for making the election with respect to gain or loss from a disposition of property used in a passive activity. The election under Act section 501(a) (Code section 469(j)(9)) shall be made on the form prescribed by the Internal Revenue Service for computing the taxpayer's passive activity loss and credit for the taxable year in which the property is disposed.

(iv) Special rules for making the election with respect to cooperative housing corporations. The election under Act section 644(d) (Code section 216(b)(3)(B)(ii)) may be made by a cooperative housing corporation with respect to its real estate taxes or interest or both. The election is available for any taxable year beginning after December 31, 1986, if the cooperative housing corporation has, by January 31 of the year following the first calendar year that includes any period to which the election applies, furnished to each tenant-stockholder during that period a written statement showing the amount of the allocation (or allocations) under section 216(b)(3)(B)(i) attributable to such tenant-stockholder's dwelling unit (or units) for that period. Any cooperative housing corporation making the election shall do so in accordance with paragraph (a) (2) and (3) of this section and shall identify in the statement described in paragraph (a)(3) of this section whether the election is for real estate taxes or interest or both.

(v) Special rules for making the election with respect to the simplified dollar-value LIFO method. The election under Act section 802 (Code section 474) may be made only if the taxpayer files with the taxpayer's income tax return for the taxable year as of the close of which the method is first to be used a statement of the taxpayer's election to use the simplified dollar-value LIFO inventory method. The statement shall be on Form 970 pursuant to the instructions to the form and to the requirements of the regulations under section 474, or in such other manner as may be acceptable to the Commissioner.

(vi) Special rules for making election to have section 453C not apply to obligations arising from sales of timeshares and unimproved residential lots to individuals. The election under Act section 811(a) (Code section 453C(e)(4)) to have section 453C not apply to obligations arising from sales of timeshares and unimproved residential lots to individuals may be made with respect to any obligation, or with respect to a class of such obligations. In the case of an election made with respect to a class of obligations, such election shall describe the class of obligations with such specificity as to make the class readily identifiable.

(vii) Special rules for making certain finance leasing transitional rule elections. The election relating to finance leases under Act section 1801(a)(1) (Code section 168(i) as in effect before October 22, 1986) shall be made by the lessor under a lease agreement subject to the finance lease rules of section 168(i) of the Code, as in effect before October 22, 1986, by noting this election in the books and records relating to the lease agreement within 12 months after February 5, 1987.

(viii) Special rules for making the election relating to the date leased property is treated as originally placed in service. The election under Act section 1809(e)(2) (Code section 48(b)(2)) must be made jointly by the lessee and the lessor. The election is made jointly when both the lessee and the lessor make the election in accordance with paragraphs (a)(2) and (a)(3)(i) of this section. In addition to the other information required to be provided under paragraph (a)(3)(i) of this section, the statement described therein shall include a copy of the lease agreement and shall be signed by both the lessee and the lessor.

(ix) Special rules for making the election to be treated as a resident alien. The election under Act section 1810(l)(4) (Code section 7701(b)) to be treated as a resident under Code section 7701(b) shall be made by an alien individual by attaching a statement to the individual's income tax return (Form 1040), for the taxable year

for which the election is to be in effect (the election year). The alien individual may not make this election until such time as he has satisfied the substantial presence test of Code section 7701(b)(1)(A)(ii) for the year following the election year. If an alien individual has not satisfied the substantial presence test for the year following the election year as of the due date (without regard to extensions) of the tax return for the election year, the alien individual may request an extension of time for filing the return until after he has satisfied such test, provided that he pays with his extension application the amount of tax he expects to owe for the election year, computed as if he were a non-resident alien throughout the election year. The statement shall include the name and address of the alien individual and contain a signed declaration that the election is being made. It must specify-

(A) That the alien individual was not a resident in the year immediately preceding the election year;

(B) That the alien individual is a resident in the year immediately following the election year under the substantial presence test and the individual's number of days of presence in the United States during such year;

(C) The date or dates of the alien individual's 31 consecutive day period of presence and continuous presence in the United States during the election year; and

(D) The date or dates of absence from the United States during the election year that are deemed to be days of presence.

(x) Special rules for making the election with respect to the treatment of the exercise of certain nonqualified stock options. The election under Act section 1879(p)(1) (Code section 83(c)(3)) is made by filing on Form 1040X a claim for credit or refund of the overpayment of tax resulting from the election. In order to satisfy the requirements of §301.6402-2(b)(1) (relating to grounds set forth in claim), the claim for credit or refund must set forth)-

(A) The date on which the option was granted,

(B) The name of the corporation which granted the option,

(C) The date on which the stock was transferred pursuant to the exercise of the option,

(D) The fair market value of such stock on December 4, 1973,

(E) The fair market value on July 1, 1974 of the stock received upon the reorganization of the corporation which granted the option, and

(F) The date on which the taxpayer sold substantially all of the stock received in such reorganization. The taxpayer shall file a single claim for credit or refund of the entire overpayment of tax resulting from the election under Act section 1879(p)(1).

(4) Revocation- (i) Irrevocable elections. The elections described in this section under Act sections 201(a) (Code sections 168(b)(5), 168(f)(1), 168(g)(7), and 168(h)(6)(F)(ii)), 203(a)(1)(B), 252(a) (Code sections 42(f)(1), 42(g)(1), 42(i)(2),

and 42(j)(5)), 411(b)(1) (Code section 263(i)), 411(b)(2)(A) (Code section 616(d)(2)(A)), 501(a) (Code section 469(j)(9)), 801(d)(2), 905(c), 1301(b) (Code sections 141(b)(9), 142(d)(1), 142(d)(4)(B), 143(k)(9)(D)(iii), 145(d), and 147(b)(4)(A)), 1431(a) (Code section 2652(a)(3)), 1704(b), 1802(a) (Code section 168(j) as in effect before October 22, 1986), 1804(e)(4), 1879(p)(1) (Code section 83(c)(3)), and 1882(C) (Code section 3121(w)(2)) are irrevocable.

(ii) Elections revocable with the consent of the Commissioner. The elections described in this section under Act sections 204(e), 243(a), 243(b), 243(a)(b), 411(b)(2)(B) (Code section 617(h)(2)(A)), 614(b) (Code section 1059(c)(4)), 621(a) (Code section 382(l)(5)(H)), 644(d) (Code section 216(b)(3)), 646, 651 (Code section 4982(e)(4)(B)), 701(a) (Code section 56(f)(3)(B)), 801(a) (Code section 448(d)(4)), 802 (Code section 474), 803(a) (Code section 263A(d)(3)), 806(e)(2)(C) (and the election described in H.R. Rep. No. 99-841 at II-320), 811(a) (Code sections 453C(b)(2)(B) (i) and 453C(e)(4)), 901(a) (Code sections 585(c)(3)(B)(ii) and 585(c)(4)), 905(a) (Code section 165(l)(1)), 1801(a) (Code section 168(i) as in effect before October 22, 1986), 1807(a)(7) (Code section 468B), 1809(e)(2) (Code section 48(b)(2)), and 1810(l)(4) (Code section 7701(b)) are revocable only with the consent of the Commissioner.

(iii) Freely revocable elections. The elections described in this section under Act sections 311(d)(2) and 1431(a) (Code section 2632(b)(3)) are freely revocable.

(b) Elections with respect to the low-income housing credit. The elections under Act section 252 (a) (Code sections 42(f)(1), 42(g)(1), 42(i)(2), and 42(j)(5)) must be made for the taxable year in which the project is placed in service and shall be made in the certification required to be filed pursuant to section 42(l)(1).

(c) Election to have the rules of section 263A (relating to capitalization and inclusion in inventory costs of certain expenses) not apply to any plant or animal produced in any farming business conducted by the electing taxpayer-(1) In general. This paragraph applies to the election under Act section 803(a) (Code section 263A(d)(3)) to have the rules of section 263A (relating to capitalization and inclusion in inventory costs of certain expenses) not apply to any plant or animal produced in any farming business conducted by the electing taxpayer. The election is available to taxpayers engaged in the business of farming, including producers of agricultural crops, livestock, nursery stock, sod, trees bearing fruit, nuts or other crops, and ornamental trees (for purposes of section 263A, an evergreen tree that is more than 6 years old at the time it is severed from the roots shall not be treated as an ornamental tree). The election is not available to a corporation, partnership, or tax shelter that is required to use the accrual method of accounting under section 447 or section 448(a)(3), or farming syndicates (as defined in section 464(c)), or with respect to the planting, cultivation, maintenance or development of pistachio trees. In addition, the election does not apply with respect to costs incurred for the planting, cultivation, maintenance or development of any citrus or almond grove incurred during the 4-taxable-year period beginning with the taxable year in which such grove was planted. If a citrus or almond grove is planted in more than one taxable year, the portion of the grove planted in one taxable year is treated as a separate grove for this purpose.

(2) Time and manner of making the election. Unless consent is obtained from the Commissioner, the election may only be made for the taxpayer's first taxable year

that begins after December 31, 1986, and during which the taxpayer engages in a farming business. The election shall be made on the Schedule E, F or other schedule required to be attached to the income tax return for the first taxable year for which the election is effective. In the case of a partnership or S corporation, the election must be made at the partner or shareholder level.

(3) Election treated as if made if certain requirements satisfied. A taxpayer eligible to make the election under section 263A(d)(3) shall be treated as having made the election if such taxpayer reports income and expense in accordance with the rules under the election on a timely filed income tax return.

(4) Revocation. Once the election is made, it is revocable only with the consent of the Commissioner.

(5) Special rules for treatment of expenses. If the election is made, the plant or animal produced is treated as section 1245 property and gain is recaptured (treated as ordinary income) in the amount of deductions which, but for the election, would have been required to be capitalized with respect to the plant or animal. If the taxpayer or a related person makes the election, a non-accelerated method of depreciation (as defined in section 168(g)(2)) shall be applied to all property used predominantly in any farming business of the taxpayer or related person and placed in service in any taxable year during which the election is in effect. For purposes of this election, related party means: (i) the members of the taxpayer's family (defined for this purpose to include the spouse of the taxpayer and any of this or her children who have not reached the age of 18 as of the last day of the taxable year); (ii) any corporation (including an S corporation) 50 percent or more of the value of which is owned directly or indirectly (through the application of section 318) by the taxpayer or members of the taxpayer's family; (iii) any corporation that is a member of the same controlled group (within the meaning of section 1563) as the taxpayer; and (iv) any partnership if 50 percent or more of the value of the interests in such partnership is owned directly or indirectly (through the application of section 318) by the taxpayer or members of the taxpayer's family.

(d) Election with respect to the treatment of net income for the short taxable year resulting from a required change in accounting period. This paragraph applies to the election under section 806(e)(2)(C) of the Act. Net income for the short taxable year resulting from a required change in accounting period under the provisions of section 806 of the Act which is to be included ratably in the partners' and S corporation shareholders' income for the first four taxable years (including the short taxable year) beginning after December 31, 1986, or included entirely in income for the short taxable year at the election of the partner or shareholder, shall be taken into account in accordance with section 702 (with respect to partners) and section 1366 (with respect to S corporation shareholders).

(e) Election with respect to reducing partnership or S corporation income for the short taxable year resulting from a required change in accounting period under section 806 of the Act by an unamortized adjustment amount existing as of October 22, 1986.-(1) In general. This paragraph applies to the election described in H.R. Rep. No. 99-841 at II-320.

(2) Partnerships or S corporations that make the election to reduce income for the short taxable year by an unamortized adjustment amount existing as of October 22,

1986. Where a partnership or S corporation elects to reduce its income for the short taxable year required under the provisions of section 806 of the Act by the unamortized adjustment amount existing as of October 22, 1986, in accordance with paragraph (a) of this section, the income for the short taxable year (reduced by the unamortized adjustment amount) may then be subject to the election, under section 806(e)(2)(C) of the Act, by partners and S corporation shareholders to include all the net income for the short taxable year entirely in income for the partners' or shareholders' taxable year with or within which the short taxable year ends.

(3) Partnership or S corporations that do not make the election to reduce income for the short taxable year by an unamortized adjustment amount existing as of October 22, 1986. Where a partnership or S corporation does not elect to reduce its income for the short taxable year created by the provisions of section 806 of the Act by the unamortized adjustment amount existing as of October 22, 1986, as provided in paragraph (a) of this section, the short taxable year required under the provisions of section 806 of the Act shall be considered one taxable year for purposes of amortizing the adjustment amount under the requirements of Rev. Proc. 72-51, 1972-2 C.B. 832, or Rev. Proc. 83-25, 1983-1 C.B. 689. The net income of the partnership or S corporation after reduction by the adjustment amount for the short taxable year may then be subject to the election under section 806(e)(2)(C) of the Act by partners or S corporation shareholders to include all the net income for the short taxable year entirely in income for the partners' or shareholders' taxable year with or within which the short taxable year of the partnership or S corporation ends.

(f) Election with respect to the treatment of certain losses in insolvent financial institutions-(1) In general. This paragraph applies to the election under Act section 905(a) (Code section 165(l)(1)). If-

(i) As of the close of the taxable year, it can reasonably be estimated that there is a loss on a deposit of a qualified individual (as defined in section 165(l)(2)) in a qualified financial institution (as defined in section 165(l)(3)), and

(ii) Such loss is on account of the bankruptcy or insolvency of such institution,

then the qualified individual may elect to treat the entire amount so estimated for that taxable year (disregarding any amount treated as a casualty loss under section 165(c)(3) in a previous taxable year) as a loss §5h.5(f)(1) described in section 165(c)(3) and incurred during the taxable year. The election shall apply to all losses of the qualified individual on deposits in the institution with respect to which an election is made, and section 166 (relating to bad debts) shall not apply to any loss with respect to which an election is made.

(2) Time and manner of making the election. The election may be made by claiming such loss on the tax return for any taxable year in which a reasonable estimate of such loss can be made. If the qualified individual does not claim such loss on the tax return for that taxable year, the qualified individual may not subsequently amend the tax return for that taxable year to claim such loss for that taxable year. However, for a tax return filed with respect to a taxable year beginning after December 31, 1982, but before January 1, 1986, the qualified individual may subsequently (before the expiration of the period prescribed for filing a claim for credit or refund) amend the tax return for that taxable year to claim such loss for that taxable year.

(3) Revocability of the election. This election may be revoked only with the consent of the Commissioner.

(g) Elections with respect to certain bonds. The elections under Act section 1301(b) (Code sections 141(b)(9), 142(d)(1), 142(d)(4)(B), 143(k)(9)(D)(iii), 145(d), and 147(b)(4)(A)) must be made in the §5h.5 (g) bond indenture or a related document (as defined in §1.103-13(b)(8)) on or before the date of issue. With respect to obligations issued on or before March 9, 1987 these elections must be made on or before March 9, 1987 and need not be made in the bond indenture or a related document, but must be made in writing and retained as part of the issuer's books and records.

(h) Revocation of the election for exemption from social security taxes by certain clergy-(1) In general. This paragraph applies to the election under Act section 1704(b) to revoke an election under section 1402(e)(1) of the Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order), or a Christian Science practitioner. Only elections which are effective for the taxable year containing October 22, 1986 may be revoked under this paragraph.

(2) Time for revoking the election. The election shall be revoked by filing Form 2031 before the date on which the individual becomes entitled to benefits under sections 202(a) or 223 of the Social Security Act (without regard to sections 202(j)(1) or 223(b) of such Act), and not later than the due date of the Federal income tax return (including any extension thereof) for the individual's first taxable year beginning after October 22, 1986.

(3) Manner of revoking the election. To revoke an election under section 1402(a)(1), the individual shall file Form 2031 in accordance with the instructions accompanying that form. The revocation shall be made effective, as designated by the individual on the form, either with respect to the individual's first taxable year beginning after October 22, 1986.

(4) Special rules for payment of self-employment taxes with respect to certain taxable years ending on or after October 22, 1986-(i) Elections filed after the due date of the Federal income tax return. In Form 2031 is filed on or after the due date of the Federal income tax return (including any extension thereof) for the individual's first taxable year ending on or after October 22, 1986, and the election made therein is effective with respect to that taxable year, Form 2031 shall be accompanied by an amended Federal income tax return for such taxable year together with payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Code with respect to all of the individual's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of subtitle A of the Code (notwithstanding paragraph (4) or (5) of section 1402(c)) but for the exemption under section 1402(e)(1).

(ii) Elections filed before the due date of the Federal income tax return. If Form 2031 is filed before the due date of the Federal income tax return (including any extension thereof) for the individual's first taxable year ending on or after October 22, 1986, and the election is effective with respect to that taxable year, payment in full of an amount equal to the total of the taxes that would have been imposed by section

1401 of the Code with respect to all of the individual's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of the subtitle A of the Code (notwithstanding paragraph (4) or (5) of section 1402(c)) but for the exemption under section 1402(e)(1) shall be made:

(A) In the case of Forms 2031 that are filed on or before the date on which the individual's Federal income tax return for such first taxable year is filed, with the individual's Federal income tax return for such taxable year; and

(B) In the case of Forms 2031 that are filed after the date on which the individual's Federal income tax return for such first taxable year is filed, with an amended Federal income tax return for that taxable year filed on or before the due date for the individual's Federal income tax return (including any extension thereof) for such taxable year.

(iii) Interest on amounts paid after the due date of the Federal income tax return. If any amount of tax imposed by section 1401 for an individual's taxable year with respect to which an election under this paragraph (h) is effective is paid after the due date of the individual's Federal income tax return (without regard to extensions) for such taxable year, interest will be assessed on such tax from the due date of such return (without regard to extensions) to the date on which such tax is paid.

(5) Revocability of the revocation of the election. Once having filed Form 2031, the individual may not thereafter file an application for an exemption under section 1402(e)(1).

(6) Effective date of this provision. This provision shall apply with respect to remuneration received in the taxable years for which the individual designates the revocation to be effective, as described in paragraph (h)(3) of this section, and with respect to monthly insurance benefits payable under title II of the Social Security Act on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).

(i) Revocation of the election for exemption from social security taxes by certain churches on qualified church-controlled organizations-(1) In general. This paragraph applies to the election under Act section 1882 (Code section 3121 (w)(2)) to revoke an election under section 3121(w) by a church or qualified church-controlled organization (as defined in section 3121(w)(3)).

(2) Time and manner of revoking the election. The revocation described in this paragraph (i) shall be made by filing a Form 941 on or before the due date for filing Form 941 (without regard to extensions) for the first quarter for which the revocation is to be effective, accompanied by payment in full of the taxes that would be due for that quarter had there been no election under section 3121(w). See paragraph(i)(4) of this section for the effective date of revocation made under this paragraph (i).

(3) Revocability of the revocation of the election. Once an election under section 3121(w) is revoked under this paragraph (i), a new election under section 3121(w) may not be made.

(4) Effective date of this paragraph. A revocation made under this paragraph (i) shall be effective for the quarter of the calendar year covered by the Form 941 on which the revocation is made in accordance with paragraph (i)(2) of this section and all subsequent quarters. However, no revocation shall be effective prior to January 1, 1987 unless such electing church or church-controlled organization had withheld and paid over all employment taxes due, as if such election had never been in effect, during the period from the effective date of the election being revoked through December 31, 1986.

(j) Additional information required. Later regulations or revenue procedures issued under provisions of the Code or Act covered by this section may require the furnishing of information in addition to that which was furnished with the statement of election described in this section. In such event, the later regulations or revenue procedures will provide guidance with respect to the furnishing of such additional information. (26 U.S.C. 7805).

PART 602-[AMENDED]

Par. 3. The authority for Part 602 continues to read as follows:

Authority:

26 U.S.C. 7805.

§602.10 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§5h.5 . . . 1545-0982".

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: January 13, 1987.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.