

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 1.263(a)-1: Capital expenditures; in general.
(Also Part I, §§ 162, 446, 481; 1.167(a)-11, 1.446-1)

Rev. Proc. 2011-28

SECTION 1. PURPOSE

This revenue procedure provides two alternative safe harbor approaches that taxpayers may use to determine whether expenditures to maintain, replace, or improve wireless network assets must be capitalized under § 263(a) of the Internal Revenue Code: a network asset maintenance allowance method or a units of property method. This revenue procedure also provides procedures for obtaining automatic consent to change to either safe harbor method of accounting permitted by this revenue procedure.

SECTION 2. BACKGROUND

.01 Taxpayers that provide wireless telecommunication services incur significant expenditures to maintain, replace, and improve wireless network property. Whether these expenditures are deductible as repairs under § 162 or must be capitalized as improvements under § 263(a) depends on whether the expenditures materially increase

the value of the property or substantially prolong its useful life. See § 1.162-4 of the Income Tax Regulations. Applying capitalization principles to wireless network assets can be particularly difficult, largely because the property consists of a network of interconnected items such as mobile telephone switching offices and property located at cell sites. Taxpayers and the Internal Revenue Service often do not agree on which items within this network constitute discrete units of property and whether the replacement of a particular item materially increases the value or substantially prolongs the useful life of a unit of property.

.02 To minimize disputes regarding the deductibility or capitalization of expenditures to maintain, replace, or improve wireless network assets, this revenue procedure provides two alternative safe harbor approaches. Section 5 provides a wireless “network asset maintenance allowance method” for determining the amount of expenditures required to be capitalized under § 263(a). Section 6 defines units of property that may be adopted and to which existing principles under § 263(a) are applied.

.03 A taxpayer’s method for determining whether an expenditure is deductible or is capitalizable is a method of accounting under § 446. Except as otherwise expressly provided by the Code or the regulations thereunder, § 446(e) and § 1.446-1(e)(2) require a taxpayer to secure the consent of the Commissioner of Internal Revenue before changing a method of accounting for federal income tax purposes. Section 1.446-1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions necessary to permit a taxpayer to obtain consent to change a method of accounting. Section 7 of this revenue procedure

provides the procedures by which a taxpayer may obtain automatic consent for a change in method of accounting to adopt either of the alternative safe harbor approaches provided by this revenue procedure.

SECTION 3. SCOPE

This revenue procedure applies to a taxpayer that has a depreciable interest in wireless network assets (as described in section 4 of this revenue procedure) used primarily to provide wireless telecommunication or broadband services by mobile phones (for example, cell phones or smartphones). This revenue procedure does not apply to a taxpayer that is primarily a cable operator. The determination of whether a taxpayer is within the scope of this revenue procedure is made by each member of a consolidated group, by a partnership, or by an S corporation.

SECTION 4. DEFINITIONS

The following definitions apply solely for purposes of this revenue procedure:

.01 Wireless network assets. “Wireless network assets” means all personal and real property used by a wireless telecommunications carrier to provide wireless telecommunication or broadband services by mobile phone. Wireless network assets include a mobile telephone switching office (MTSO) and property located at cell sites. Wireless network assets do not include personal or real property not directly used to provide wireless telecommunication or broadband services by mobile phone, such as a corporate office building and the furniture and equipment used in an office building.

.02 Mobile telephone switching office. “Mobile telephone switching office” (MTSO) means a central switching facility that transmits wireless voice and data

(including video) communications to and from cell sites and other equipment that comprise the wireless network, and also connects the wireless network to the wireline network (public switched telephone network). The MTSO and its equipment are powered by conventional electrical service with back-up support from electric generators or battery systems.

.03 MTSO equipment. "MTSO equipment" means the equipment located at a MTSO and typically includes computer-based switching equipment and related equipment at the MTSO (including the computer-based switching equipment, base station controllers (or generational equivalent), radio network controllers, mobility managers, operations and management platforms, protocol handlers, vocoders, modems, cross-connects, optical-cross connect bays, and associated cables), dedicated heating, ventilation, and air conditioning (HVAC) equipment and dedicated power (including battery backup system) for the computer-based switching equipment and related equipment at the MTSO.

.04 Cell site transmission equipment. "Cell site transmission equipment" includes the antenna systems (including the antenna itself, antenna cables, microwave equipment, RET equipment, and the RET central control unit (CCU) controller) but does not include base transceiver station radio cabinets or cell site support and other equipment.

.05 Cell site radio equipment. "Cell site radio equipment" includes the base station controller (or generational equivalent), base transceiver station (or generational equivalent), their own weather proof enclosure or cabinet (including any equipment integrated into or built into the base station controller or base transceiver station; for

example, integrated or built-in equipment might include HVAC and power equipment, alarms, enhanced 911 service equipment, or the RET CCU controller), and associated cables.

.06 Cell site support equipment. “Cell site support equipment” includes the alarms or enhanced 911 service equipment not integrated into or built into a base station controller or base transceiver station, and associated cables. This unit of property does not include general incoming power panels, general receptacles, general lighting, common cell site enclosure grounding systems, or equipment integrated into or considered part of the cell site enclosure.

SECTION 5. NETWORK ASSET MAINTENANCE ALLOWANCE METHOD FOR WIRELESS NETWORK ASSETS

.01 In general. Under the network asset maintenance allowance method, the taxpayer must determine the amount of its wireless network asset expenditures that are not required to be capitalized under section 5.02 of this revenue procedure (network asset maintenance allowance) and the amount of wireless network asset expenditures that are treated as § 263(a) capital expenditures under section 5.03 of this revenue procedure (§ 263(a) capital expenditures). A taxpayer that uses the network asset maintenance allowance method described in this section 5 must use that method for all of its wireless network asset expenditures (which includes expenditures relating to wireless network assets acquired in an applicable asset acquisition as defined in § 1060 or in a transaction to which § 338(h)(10) applies, even though the cost of such property is removed from the total cost of capital additions for the taxable year as provided in § 5.02(2)(b)–(c) below).

.02 Network asset maintenance allowance. The amount of the network asset maintenance allowance for a particular taxable year is determined as follows:

(1) Start with the total cost of capital additions for financial statement purposes that are placed in service (within the meaning of § 1.46-3(d)(1)(ii)) during the taxable year.

(2) Decrease the amount determined in (1) by the following amounts:

(a) the cost of property other than wireless network assets;

(b) the cost of any wireless network assets acquired in an applicable asset acquisition as defined in § 1060; and

(c) the cost of any wireless network assets acquired in a transaction to which § 338(h)(10) applies.

(3) Adjust the amount determined after applying steps (1) and (2) to determine the adjusted basis of the property under § 1011, including any adjustments described in § 1016 except for the following:

(a) Any basis adjustments attributable to changes made after December 31, 2007 to the taxpayer's unit of property definitions used for repair versus capitalization determinations.

(b) Any adjustments described in § 1016(a)(2) and § 1016(a)(3) and any adjustments that require tax basis to be reduced before depreciation is computed (e.g., § 179, § 179D, or similar provisions; § 44 and § 46; and the payments for specified energy property under § 1603 of the American Recovery and Reinvestment Tax Act of 2009, Division B, Pub. L. 111-5, 123 Stat. 115 (section 1603 payments)).

(4) Using the adjusted basis determined in step (3), determine the amount attributable to 5-year, 7-year, and 15-year property and nonresidential real property, and multiply each of these amounts by 5%. The result is the network asset maintenance allowance for each class of property

(5) The sum of the network asset maintenance allowances determined in (4) for each class of property is the taxpayer's network asset maintenance allowance amount for the taxable year.

.03 § 263(a) capital expenditures. The wireless network asset capital expenditures for § 263(a) for the taxable year under the network asset maintenance allowance method are determined as follows:

(1) Start with the adjusted basis for 5-year, 7-year, and 15-year property and nonresidential real property determined in section 5.02(4) above.

(2) For each class of property, multiply the adjusted basis attributable to the class of property by 95%. The result is each class of property's basis amount after taking into account the network asset maintenance allowance.

(3) For each class of property, allocate that class of property's basis amount determined in 5.03(2) among the class of property's wireless network assets (excluding wireless network assets acquired in an applicable asset acquisition as defined in § 1060 or in a transaction to which § 338(h)(10) applies) according to the basis of each wireless network asset determined before application of the network asset maintenance allowance.

(4) The amount determined in (3) for each network asset (excluding wireless network assets acquired in an applicable asset acquisition as defined in § 1060 or in a

transaction to which § 338(h)(10) applies) is the basis of such asset to be used to determine the deductions allowable or income tax credits available that require tax basis to be reduced before any depreciation is computed (for example, § 179, § 179D, or similar provisions; § 44 and § 46; and section 1603 payments). The net amount for each network asset after the reduction in basis for such deductions, credits, and section 1603 payments is that property's § 1.168(b)-1(a)(3) unadjusted depreciable basis.

(5) In addition, expenditures for wireless network assets acquired in an applicable asset acquisition as defined in § 1060 or in a transaction to which § 338(h)(10) applies are capital expenditures under § 263(a) to which the ordinarily applicable basis and holding period rules and regulations apply.

.04 Required schedule. A taxpayer utilizing the network asset maintenance allowance method must attach a schedule to its federal income tax return for the taxable year identifying the amounts for each step of the network asset maintenance allowance method computation provided in sections 5.02(1)-(5) above.

.05 Example. X is a wireless telecommunications carrier with wireless network assets used primarily to provide wireless telecommunication or broadband services by mobile phones. X adopts the wireless network asset maintenance allowance method provided in this revenue procedure. To determine the wireless network asset maintenance allowance for the taxable year, X first determines its adjusted basis attributable to wireless network assets as follows:

Total cost of capital additions placed in service for the taxable year per financial statements	\$1,000,000,000
<u>Less:</u> Cost of property other than wireless network assets (e.g. land, intangibles, etc.)	(\$100,000,000)
<u>Less:</u> Cost of assets acquired in a § 1060 or § 338(h)(10) transaction	(\$11,000,000)

<u>Less/Plus:</u> Other basis adjustments (excluding adjustments per IRC §§ 1016(a)(2) & (a)(3) and sections 5.02(3)(a) & 5.03(4) of this rev. proc.)	(\$3,000,000)
Adjusted basis attributable to network assets that are 5-year, 7-year, and 15-year property and nonresidential real property	\$886,000,000
<u>Multiply by:</u> Maintenance allowance percentage (5%)	X 5%
Network asset maintenance allowance amount	\$44,300,000

SECTION 6. UNITS OF PROPERTY FOR WIRELESS NETWORK ASSETS

.01 In general. For wireless network assets, the Service will not challenge any of the following unit of property determinations for purposes of the application of § 263(a) and the regulations thereunder:

(A) the MTSO building (including its structural components) constitutes a single unit of property;

(B) all of the MTSO equipment constitutes a single unit of property;

(C) all cell site transmission equipment at a cell site constitutes a single unit of property;

(D) all cell site radio equipment at a cell site constitutes a single unit of property;

(E) all cell site support equipment at a cell site constitutes a single unit of property;

(F) the antenna support structure (also known as a tower) affixed to a foundation (for example, a concrete foundation, a building rooftop, or a building wall) at a cell site constitutes a single unit of property;

(G) the concrete foundation upon which the antenna support structure is installed, including the bolts embedded therein and other depreciable assets associated with the platform or other forms of anchoring to affix a tower to a foundation, constitutes

a single unit of property;

(H) the cell site enclosure (hut) and the cement slab or foundation upon which the hut is installed constitute a single unit of property; and

(I) all depreciable land improvements at a cell site constitute a single unit of property. Depreciable land improvements include landscaping that is replaced when a related depreciable asset is replaced, fences, and sidewalks, but exclude enclosures or buildings suitable for occupation and any improvements properly capitalized to the land.

.02 Universal adoption not required. A taxpayer within the scope of this revenue procedure is not required to adopt all of the unit of property determinations provided in section 6.01 of this revenue procedure and, therefore, may adopt one or more of the unit of property determinations provided. Once adopted, however, a unit of property determination applies to all similar assets, including similar wireless network assets acquired in an applicable asset acquisition as defined in § 1060 or in a transaction to which § 338(h)(10) applies.

.03 Limitation. The unit of property determinations provided in this revenue procedure shall not apply for any other purpose of the Code or Regulations, including for determining the unit of property under other Code sections (for example, § 263A), or determining the asset for depreciation purposes (including placed in service, retirements, dispositions, or classification under § 168(e) or Rev. Proc. 87-56, 1987-2 C.B. 674), for the same or similar type of assets used in wireless telecommunications or other industries.

SECTION 7. CHANGE IN METHOD OF ACCOUNTING

.01 In general. A change to (1) the wireless network asset maintenance allowance method or (2) adoption of all, or some, of the units of property described in this revenue procedure is a change in method of accounting to which the provisions of §§ 446 and 481, and the regulations thereunder, apply. A taxpayer that wants to change to a method of accounting described in this revenue procedure must use the automatic change in method of accounting provisions in Rev. Proc. 2011-14, 2011-4 I.R.B. 330, or its successor, as modified by this revenue procedure.

.02 Automatic change. Rev. Proc. 2011-14 is modified to add new section 3.08 to the APPENDIX, to read as follows:

.08 Wireless network asset maintenance allowance and units of property methods of accounting under Rev. Proc. 2011-28.

(1) Description of change. This change applies to a wireless telecommunications carrier that is within the scope of Rev. Proc. 2011-28 and wants to change its treatment of wireless network asset expenditures to adopt either (a) the wireless network asset maintenance allowance method of accounting or (b) all, or some, of the units of property described in Rev. Proc. 2011-28.

(2) Waiver of scope limitations. The scope limitations in section 4.02 of this revenue procedure do not apply to a wireless telecommunications carrier that changes to a method of accounting provided in section 5 or section 6 of Rev. Proc. 2011-28 for its first or second taxable year ending after December 30, 2010.

(3) Section 481(a) adjustment. In general, a change to the wireless network assets maintenance allowance method of accounting or adoption of all, or some, of the

units of property specified in Rev. Proc. 2011-28 requires an adjustment under § 481(a). The § 481(a) adjustment shall not include any amount attributable to property for which the taxpayer elected to apply the repair allowance under § 1.167(a)-11(d)(2).

(4) Ogden copy of Form 3115 required in lieu of national office copy. A taxpayer changing its method of accounting under section 3.08 of the APPENDIX must file a signed copy of its completed Form 3115 with the IRS in Ogden, UT, (Ogden copy) in lieu of filing the national office copy no earlier than the first day of the year of change and no later than the date the taxpayer files the original Form 3115 with its federal income tax return for the year of change. See sections 6.02(3)(a)(ii)(B) (providing the general rules) and section 6.02(7)(b) (providing the mailing address) of this revenue procedure.

(5) Designated automatic accounting method change numbers. The designated automatic accounting method change number for a change to the method of accounting provided in Rev. Proc. 2011-28 is “159.”

(6) Contact information. For further information regarding a change under this section, contact Alan S. Williams at (202) 622-4950.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2011-14 is modified to include the accounting method change in this revenue procedure in section 3 of the Appendix.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 31, 2010.

SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Alan S. Williams of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Alan S. Williams at (202) 622-4950 (not a toll free call).