

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-209373-81]

RIN 1545-AT71

Election to Amortize Start-Up Expenditures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning start-up expenditures under section 195. The proposed regulations provide rules and procedures for electing to amortize start-up expenditures under section 195. The regulations affect all taxpayers wishing to amortize start-up expenditures under section 195. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments and outlines of topics to be discussed at the public hearing scheduled for June 2, 1998, at 10 a.m., must be received by April 13, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (PS-36-81), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand-delivered between the hours of 8:15 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-209373-81), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or

electronically, via the IRS Internet site at:

http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, David Selig, (202) 622-3040; concerning submissions and the hearing, LaNita VanDyke, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the **Office of Management and Budget** for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by March 16, 1998.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for

the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;
The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs of operation, maintenance, and purchase of services to provide information.

The requirement for the collection of information in this notice of proposed rulemaking is in §1.195-1(c). This information is required by the IRS to establish that a taxpayer properly has made an election to amortize start-up expenditures under section 195. This information will be used to determine whether the amount amortized under section 195 has been computed properly. The likely respondents are businesses and other for-profit organizations. Responses to this collection of information are required to make an election to amortize start-up expenditures under section 195. Estimated total annual reporting burden: 37,500 hours. The estimated annual burden per respondent varies from .10 hours to .50 hour, depending on individual circumstances, with an estimated average of .25 hours. Estimated number of respondents : 150,000. Estimated annual frequency of responses: one-time election.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to provide regulations under section 195 of the Internal Revenue Code. Section 195 was added to the Internal Revenue Code of 1954 by section 102 of the Miscellaneous Revenue Act of 1980, and amended by section 94 of the Tax Reform Act of 1984.

Section 195 generally provides that no deduction is allowed for start-up expenditures unless the taxpayer elects to amortize the expenditures. If the taxpayer elects to amortize start-up expenditures under section 195(b)(1), the expenditures are amortizable over a period of not less than 60 months beginning

with the month when the active trade or business begins. Under section 195(d), an election to amortize start-up expenditures must be made not later than the time prescribed by law for filing the return for the taxable year in which the active trade or business begins (including extensions thereof). Announcement 81-43 (1981-1 I.R.B. 52) described the time and manner for making this election.

An expense is a start-up expenditure if it satisfies two conditions. First, the expense must be paid or incurred in connection with any one of the following: (1) creating an active trade or business, (2) investigating the creation or acquisition of an active trade or business, or (3) any activity entered into for profit and for the production of income before the day on which the active trade or business begins, in anticipation of the activity becoming an active trade or business (expenditures in this last category are start-up expenditures only if they are attributable to periods after June 30, 1984).

Second, the expenditure must be of the type that, if paid or incurred in connection with the operation of an existing active trade or business in the same field as that being entered into by the taxpayer, would be allowable as a deduction for the taxable year when paid or incurred.

Explanation of Provisions

The proposed regulations provide that an election to amortize start-up expenditures is made by attaching a statement to the taxpayer's income tax return. The income tax return and statement must be filed not later than the date prescribed by law for filing the income tax return (including any extensions of time) for the taxable year when the active trade or business begins.

The IRS is interested in ways to simplify the filing of elections. The proposed regulations are intended to simplify the filing of section 195 elections in two ways. First, the proposed regulations clarify that a taxpayer who is uncertain as to the year in which the active trade or business begins need not file an election for each possible taxable year. Rather, a section 195 election for a particular trade or business will be effective if the trade or business becomes active in the year for which the election is filed or in any subsequent year. In developing this notice of proposed rulemaking, more burdensome methods of making the election were considered and rejected. For example, an approach that would have required taxpayers to file an election statement each year was rejected. Second, the proposed regulations also allow taxpayers who have made timely elections under section 195 to file a revised statement with a subsequent return to include any start-up expenditures not included in the original statement.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant impact on a substantial number of small entities. This certification is based upon the fact that the time required to prepare and file the election statement is minimal and will not have a significant impact on those small entities that choose to make the election. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted (in the manner described in the ADDRESSES caption) timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, June 2, 1998, at 10 a.m. in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington DC.

Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments by [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER] and submit an outline of the topics to be discussed and the time to be devoted to each topic by [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is David Selig, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.195-1 is added to read as follows:

§1.195-1 Election to amortize start-up expenditures.

(a) In general. Under section 195(b), a taxpayer may elect to amortize start-up expenditures (as defined in section 195(c)(1)). A taxpayer who elects to amortize start-up expenditures must, at the time of the election, select an amortization period of not less than 60 months, beginning with the month the active trade or business begins. The election applies to all of the taxpayer's start-up expenditures. The election is irrevocable and the amortization period selected by the taxpayer in making the election may not subsequently be changed.

(b) Time and manner of making election. The election to amortize start-up expenditures under section 195 shall be made by attaching a statement containing the information described in paragraph (c) of this section to the taxpayer's return. The statement must be filed no later than the date prescribed by law for filing the return (including any extensions of time) for the taxable year when the active trade or business begins. The statement may be filed with a return for any taxable year prior to the year in which the taxpayer's active trade or business begins, but no later than the date prescribed in the preceding sentence. Accordingly, an election under section 195 filed in a taxable year prior to the year in which the taxpayer's active trade or business begins will become effective in the month for the later year in which the taxpayer's active trade or business begins.

(c) Information required. The statement shall set forth a description of the trade or business to which it relates with sufficient detail so that expenses relating to the trade or business can be identified properly for the taxable year in which the statement is filed and for all future taxable years to which it relates. To the extent known at the time the statement is filed, the statement also shall include a description of each start-up expenditure incurred (whether or not paid); the month when the active trade or business began (or was acquired); and the number of months (not less than 60) over which the expenditures are to be amortized. A revised statement to include any start-up expenditures not included in the taxpayer's original election statement may be filed with a return filed after the return that contained the election.

(d) Effective date. This section applies to elections filed on or after the date final regulations are published in the **Federal Register**.

Deputy Commissioner of Internal Revenue

Michael P. Dolan