

the taxable year with respect to property that was at any time a position in that straddle (including loss realized in an earlier taxable year).

(ii) *Mixed straddle accounts.* With respect to each mixed straddle account (as defined in § 1.1092(b)-4T(b)), the amount of gain taken into account shall be the annual account gain for that mixed straddle account, computed pursuant to § 1.1092(b)-4T(c)(2).

(5) *Certain transactions similar to straddles.* In computing the gross income and qualifying income of a partnership for purposes of section 7704(c)(2) and this section, related interests in property (whether or not personal property as defined in section 1092(d)(1)) that produce a substantial diminution of the partnership's risk of loss similar to that of a straddle (as defined in section 1092(c)) shall be combined so that the amount of gain taken into account by the partnership in computing its gross income shall be the excess, if any, of gain recognized during the taxable year with respect to such interests over any loss recognized during the taxable year with respect to such interests.

(6) *Wash sale rule—(i) Gain not taken into account.* Solely for purposes of section 7704(c)(2) and this section, if a partnership recognizes gain in a section 7704 wash sale transaction with respect to one or more positions in either a straddle (as defined in section 1092(c)) or an arrangement described in paragraph (b)(5) of this section, then the gain shall not be taken into account to the extent of the amount of unrecognized loss (as of the close of the taxable year) in one or more offsetting positions of the straddle or arrangement described in paragraph (b)(5) of this section.

(ii) *Section 7704 wash sale transaction.* For purposes of this paragraph (b)(6), a section 7704 wash sale transaction is a transaction in which—

(A) A partnership disposes of one or more positions of a straddle (as defined in section 1092(c)) or one or more related positions described in paragraph (b)(5) of this section; and

(B) The partnership acquires a substantially similar position or positions within a period beginning 30 days before the date of the disposition and ending 30 days after such date.

(c) *Effective date.* This section applies to taxable years of a partnership beginning on or after December 17, 1998. However, a partnership may apply this section in its entirety for all of the partnership's open taxable years

beginning after any earlier date selected by the partnership.

Robert E. Wenzel,  
Deputy Commissioner of Internal Revenue.

Approved: December 7, 1998.

Donald C. Lubick,  
Assistant Secretary of the Treasury (Tax Policy).  
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BILLING CODE 4830-01-U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 602

[TD 8797]

RIN 1545-AT77

#### Election to Amortize Start-Up Expenditures for Active Trade or Business

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations concerning start-up expenditures for active trade or business under section 195. These regulations are necessary to provide rules and procedures for electing to amortize start-up expenditures under section 195. They affect all taxpayers wishing to amortize start-up expenditures under section 195.

**DATES:** *Effective Date:* These regulations are effective December 17, 1998.

*Applicability Date:* For the date of applicability of these regulations, see § 1.195-1(d).

**FOR FURTHER INFORMATION CONTACT:** David Selig, (202) 622-3040 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1582.

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 control number.

The estimated annual burden per respondent varies from .10 hours to .50 hours, depending on individual circumstances, with an estimated average of .25 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and 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.

Books or records relating to this 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

Section 195 was added to the Internal Revenue Code of 1954 by section 102 of the Miscellaneous Revenue Act of 1980, and was 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. Under section 195(b)(1), if the taxpayer elects to amortize start-up expenditures, the expenditures are amortizable over a period of not less than 60 months beginning with the month in which the active trade or business begins. Section 195(d) provides that 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).

On January 13, 1998, the IRS published a notice of proposed rulemaking [REG-209373-81] in the *Federal Register* (63 FR 1933) proposing amendments to the Income Tax Regulations (26 CFR part 1) concerning the election to amortize start-up expenditures under section 195 of the Internal Revenue Code. A public hearing was scheduled for June 2, 1998, pursuant to a notice of public hearing published simultaneously with the notice of proposed rulemaking. No one requested to speak at the public hearing, therefore, no public hearing was held. Written comments responding to the notice were received. After consideration of all of the comments, the proposed regulations are adopted as revised by this Treasury decision.

#### Explanation of Revisions and Discussion of Comments

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 in which the active trade or business begins. Thus, a taxpayer may file an election for any taxable year prior to the year in which the taxpayer's active trade or business begins, and such election will become effective in the month of the year in which the taxpayer's active trade or business begins.

One commentator suggested that the provision in the proposed regulations permitting the filing of a revised statement to include any start-up expenditures not included in the taxpayer's original election statement appears to endorse the practice of those taxpayers who file elections listing token or zero start-up expenditures on the election statement and subsequently attempt to increase the amount subject to amortization by expenditures that taxpayers have been unsuccessful in maintaining as expansion costs. The provision is not designed to permit a taxpayer to revise the election statement to include start-up expenditures omitted by reason of the taxpayer's claim on the taxpayer's return that the expenditures are expansion costs. Accordingly, the regulations have been clarified to provide that the election statement may not be revised to include expenditures that a taxpayer has treated on the taxpayer's tax return in a manner inconsistent with their treatment as start-up expenditures.

Another commentator suggested that a separate statement to make the election under section 195 should not be required for small businesses, but rather a check-the-box election should be provided. A separate statement is necessary to ensure that the expenses listed therein are properly characterized as start-up expenditures, and that amortization of the start-up expenditures will begin and end at the proper times. The statement is simple to complete and the time to prepare the statement is minimal. Accordingly, the final regulations retain the requirement that a separate statement with the requisite information be attached to the taxpayer's return.

#### Special Analyses

It has been determined that this Treasury decision 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, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

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

##### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 602

Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are 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 in which the active trade or business begins. The election applies to all of the taxpayer's start-up expenditures with respect to the trade or business. The election to amortize start-up expenditures 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 in which 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 for any taxable year prior to the year in which the taxpayer's active trade or business begins (and pursuant to which the taxpayer commenced amortizing start-up expenditures in that prior year) will become effective in the month of the 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. The statement also shall include the number of months (not less than 60) over which the expenditures are to be amortized, and to the extent known at the time the statement is filed, a description of each start-up expenditure incurred (whether or not paid) and the month in which the active trade or business began (or was acquired). A revised statement may be filed to include any start-up expenditures not included in the taxpayer's original election statement, but the revised statement may not include any expenditures for which the taxpayer had previously taken a position on a return inconsistent with their treatment as start-up expenditures. The revised 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 December 17, 1998.

#### PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 3.** The authority citation for part 602 continues to read as follows:

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

**Par. 4.** In § 602.101, paragraph (c) is amended by adding an entry to the table in numerical order to read as follows:

**§ 602.101 OMB Control numbers.**

CFR part or section where identified and described	Current OMB control No.
1.195-1	1545-1582

Bob Wenzel,  
 Deputy Commissioner of Internal Revenue.  
 Approved: November 30, 1998.  
 Donald C. Lubick,  
 Assistant Secretary of the Treasury.  
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 BILLING CODE 4830-01-U

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

[CGD08-98-075]

RIN 2115-AE47

**Drawbridge Operation Regulation; Lake Pontchartrain, LA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** The Coast Guard is temporarily changing the regulation for the operation of the draws of the Greater New Orleans Expressway Commission causeway, north bascule spans across Lake Pontchartrain between Metairie, Jefferson Parish and Mandeville, St. Tammany Parish, Louisiana. From December 14, 1998 through March 20, 1999, the draws will remain closed to navigation Mondays through Saturdays except for federal holidays and the weekends inclusive of federal holidays and on Mardi Gras Day, the draws will open on signal if at least three hours notice is given. This temporary rule is issued to allow for completion of a project to clean and paint the bascule structures, an extensive but necessary maintenance operation.

**DATES:** This temporary rule is effective from December 14, 1998 through March 20, 1999.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130-3396 between 7 a.m.

and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary rule. **FOR FURTHER INFORMATION CONTACT:** Phil Johnson or David Frank, Bridge Administration Branch, at the address and telephone number given above. **SUPPLEMENTARY INFORMATION:** On June 23 1998, the Coast Guard issued a temporary rule [63 FR 35820 (July 1, 1998)] for the regulation governing the operation of the draws of the Greater New Orleans Expressway Commission causeway, north bascule spans across Lake Pontchartrain, to allow the draws to remain closed Monday through Saturday from July 6, 1998 through November 10, 1998. The temporary rule was issued to allow for the cleaning and painting of the bascule structures. However, the contractor was unable to complete the project for reasons including the approach of two hurricanes in the month of September which required the removal of all equipment from the site. Presently, the contractor is prepared to continue with the project and is expending funds to maintain barges, tugs and related equipment needed to complete the project. The temporary rule expired on November 10, 1998. November 27, 1998, the Coast Guard received a request from the Greater New Orleans Expressway Commission for another temporary rule to allow the work to begin on December 4, 1998 and to continue through March 13, 1999. Since this request did not provide an opportunity for notices to mariners to be issued, the effective dates were changed to December 14, 1998 through March 20, 1999. The portions of the bascule structure which have not been stripped and painted remain in a deteriorated condition which warrants the closures so that remedial work can be accomplished. The contractor is prepared to resume work and will experience loss of funds if not allowed to continue without unnecessary delays. The Coast Guard was not notified in time to issue a notice of proposed rulemaking. For these reasons, good cause exists to issue this temporary rule without notice to provide an opportunity for comments and to make this temporary rule effective in less than 30 days after publication.

**Background and Purpose**

The south channel span of the Greater New Orleans Expressway Commission causeway across Lake Pontchartrain Louisiana provides an alternate route with a vertical clearance of 50 feet above mean high water. Navigation on the

waterway consists of small tugs with tows, fishing vessels, sailing vessels and other recreational craft. The special equipment used for this procedure has to be removed each time the draw span is opened. Since this process is time consuming and costly, the equipment must remain in place for 6-day periods, allowing the contractor to maximize work time. While the draw span being serviced is in the closed to navigation position, the equipment will be supported by two crane barges which must remain in place below the draw span. The short term inconvenience, attributable to a delay of vessel traffic which is not able to use the south channel span as an alternate route, for a maximum of six days, is outweighed by the long term benefits to be gained by keeping the bridges free of corrosion and in proper working condition. The work is essential for the continued operation of the draw spans. Presently, the draws open on signal if at least three hours notice is given.

**Regulatory Evaluation**

This temporary rulemaking is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This is because of the majority of vessels affected by the closure is minimal. The majority of commercial vessels and most of the recreational sailboats sailboats which normally transit the causeway bridge are able to do so at one of the navigation humps, located at four mile intervals along the bridge, or through the south channel span, which provides a vertical clearance of 50 feet above mean high water.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with