

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 5h

(T.D. 8134)

Income Tax; Certain Elections Under  
the Tax Reform Act of 1986*Correction*In rule document 87-2219 beginning on  
page 3623 in the issue of Thursday,February 5, 1987, make the following  
corrections:

1. On page 3624, in the second column, in the authority for Part 5h, in the fifth line, "154(d)" should read "145(d)".

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

2. On the same page, in the third column, the heading for § 5h.5 should read as set forth above.

3. In the same column, in § 5h.5(a)(1), in the tenth line, "certain" should read "the".

4. On the same page, in the table, in the third column, in the entry for Act section 204(e), in the fourth line, "11-3-86" should read "11-3-85".

5. On page 3628, in the table, in the third column, in the last line, insert "("" after "organizations", and in the fourth column, in the entry for Act section 1878(p)(1), in the second line, "paragraph (a)(2)(viii)" should read "paragraphs (a)(2)(vii)".

6. On page 3628, in the second column, in § 5h.5(a)(4)(i), in the 17th line, "1862(C)" should read "1862(c)".

7. On page 3629, in the third column, in § 5h.5(f)(1), in the ninth line above paragraph (f)(2), remove "§ 5h.5(f)(1)".

8. On page 3630, in § 5h.5(g), in the first column, in the second line, remove "§ 5h.5(g)".

9. In the same column, in § 5h.5(h)(3), in the third line, "1402(s)(1)" should read "1402(e)(1)", and in the ninth line of the same paragraph, between "year" and "beginning" insert "ending on or after October 22, 1986, or with respect to the individual's first taxable year".

10. In the same column, in § 5h.5(h)(4)(i), in the third line, "In" should read "If".

BILLING CODE 4810-01-0

Under Various Public Laws (26 CFR Part 5h).

#### Need for Corrections

As published, Treasury Decision 8124 contains three typographical errors and one error of omission within the table under regulations § 5h.5. The three typographical errors fall under the heading "Availability of Election" on page 3625. The first error appears in printed line 20, the second error in printed line 39, and the third error in printed line 43.

The error of omission occurs under the heading "Section of Act" on page 3626 and appears in printed line 20.

Three additional typographical errors appear in the following locations: Page 3627, third column, first paragraph, line 20; page 3627, third column, third paragraph, line one; and page 3629, second column, fourth paragraph, line one.

#### Corrections of Publication

Accordingly, the publication of Treasury Decision 8124, which was the subject of FR Doc. 87-2219, is corrected as follows:

#### PART 5h—[CORRECTED]

##### § 5h.5 [Corrected]

Paragraph 1. In the table, on page 3625, under the heading "Availability of Election", printed line 20, the upper-case letter "S" is removed from the word "Section" and the lower-case letter "s" is added in its place.

Par. 2. In the table, on page 3625, under the heading "Availability of Election", printed line 39, the misspelled word "occurring" is removed and the correct spelling of the word "occurring" is added in its place.

Par. 3. In the table, on page 3625, under the heading "Availability of Election", printed line 43, the word "the" is added immediately following the word "on".

Par. 4. In the table, on page 3626, under the heading "Section of Act", printed line 20, the letter "1" is added within the parenthesis immediately following the act section number "1830".

Par. 5. In § 5h.5, paragraph (a) (3) (iv), page 3627, third column, line 20, the word "paragraph" is removed and the word "paragraphs" is added in its place.

Par. 6. In § 5h.5, paragraph (a) (3) (vi), page 3627, third column, line one, the word "the" is added immediately following the word "making".

Par. 7. In § 5h.5, paragraph (e) (3), page 3629, second column, line one, the word "Partnership" is removed and the

word "Partnerships" is added in its place.

Donald E. Orsman,

Director, Legislation and Regulations Division.

(FR Doc. 87-8827 Filed 3-27-87; 8:45 am)

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#### 26 CFR Part 5h (T.D. 8124)

#### Certain Elections Under the Tax Reform Act of 1986; Corrections

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to temporary regulations.

**SUMMARY:** This document contains corrections to Treasury Decision 8124, which was published in the Federal Register for Thursday, February 5, 1987 (52 FR 3623). T.D. 8124 issued temporary regulations relating to the time and manner of making certain elections under the Tax Reform Act of 1986. The rules also provided guidance to persons making these elections.

**FOR FURTHER INFORMATION CONTACT:** Joel S. Rutstein, 202-566-3297 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The temporary regulations that are the subject of these corrections relate to certain elections under various sections of the Internal Revenue Code of 1986 and the Tax Reform Act of 1986 (the Act). These rules were added to the Temporary Regulations—Elections

**26 CFR Parts 5h and 602**

(T.D. 8124)

**Income Tax: Certain Elections Under the Tax Reform Act of 1986****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:** Joel S. Rutstein of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, D.C. 20224. (Attention: CC:LR:T (LR-77-86). Telephone 202-566-3297 (not a toll free call).**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 1545-0062.

**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(h)(2), 42(h)(3), 46(b)(2), 54(f)(3)(B), 63(c)(3), 701(b)(9), 742(d)(1), 742(d)(4)(B), 743(f)(9)(D)(iii), 754(d), 747(b)(4)(A), 765(f)(1), 766(b)(5), 766(f)(1), 766(g)(7), 766(h)(6)(F)(ii), 726(b)(3), 263(i), 263A(d)(3), 282(f)(5)(H), 448(d)(4), 453C(b)(2)(B), 453C(e)(4), 468B,

4682(a), 474, 584(c)(3)(A)(ii)(1), 585(c)(4), 604(d), 617(h), 1059(c)(4), 2632(b)(3), 2652(a)(3), 3121(a)(2), 6082(a)(4), and 7701(b). Section 5h.5 also issued under Pub. L. 99-514 sections 200(a)(1)(B), 204(e), 242(a), 242(b), 311(d)(2), 846, 881(d)(2), 804(e)(2)(c), 805(c), 1204(b), 1801(e), 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.

Section of Act	Section of Code	Description of Election	Availability of Election
201(a)	1680(k)	Election to depreciate property using the straight line method of recovery with respect to one or more classes of property for any taxable year.	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.
201(a)	1680(k)(1)	Election to exclude certain property from the accelerated cost recovery system.	Property placed in service after 12-31-86. Election must be made for taxable year in which property is placed in service.
201(a)	1680(k)(7)	Election to use alternative depreciation system with respect to one or more classes of property for any taxable year limited to residential rental or non-residential real property which the election may be made separately with respect to each property.	Property placed in service after 12-31-86. Election must be made for taxable year in which property is placed in service. Election 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.
201(a), 1921(a)	1680(b)(4) (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 the 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 income except under Code section 517 or other for the tax-exempt controlled entity to not be treated as a tax-exempt entity or as a successor to a tax-exempt entity).	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 (b)(4) of the section.)
2001(a)(1)(B)		Election to apply Act section 201 (including all sections within section 201).	Property placed in service after 7-31-86 and before 1-1-87.
204(e)		Election to have Act section 201 (other) not apply to any property placed in service during 1987 or 1988 which is replacement property for property lost, destroyed or disposed in a total loss which occurred 11-5-86 through 11-5-88 and which was declared a public disaster area by the President of the United States, or (4) apply to all such replacement property placed in service during 1986 or 1988.	(4) Property placed in service during 1987 or 1988, or (4) property placed in service during 1986 or 1988.
247(a)		Election to elect the 60 month amortization period with the last month of the taxpayer's first taxable year beginning after 11-19-82 or last of the 11-19-82 date of the last operating authority acquisition date.	See operating authority rule on 11/19/82 or acquired after that date under a written contract that was binding on that date.





Act section 411(b)(1) (Code section 263(f)(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 4902(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 4902, 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 4902(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 4902 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 2002(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)(2)) 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 for 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 611(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(i)(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 11-320), 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 265(f)(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(i)(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(i)(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 his 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. 90-841 at 11-320.

(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 965(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 under section 165(l)(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 791(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(e)(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 (5) 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: 28 U.S.C. 7806.

**§ 602.10 (Amended)**

**Par. 4.** Section 602.10(c) is amended by inserting in the appropriate place in the table "§ 5h.5 . . . 1545-0002".

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.*

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