

installments, then the election is presumed to be for the maximum amount so payable and for payment thereof in 10 equal annual installments, beginning on the date prescribed in section 6151(a). The elections described under this paragraph (k) are available for estates of decedents dying after July 18, 1984.

(l) *Subchapter S election by commodities dealers and options dealers.* This paragraph applies to a commodities dealer or options dealer referred to in section 102(d)(3) of the Act (relating to the election by such a dealer to be an S corporation) whose taxable year is the calendar year and that was a small business corporation (as defined in section 1361(b) of the Code) as of January 1, 1984. The election by such a dealer under section 102(d)(3) of the Act shall be made in the manner prescribed by section 1362 and the regulations thereunder, except that the election under section 102(d)(3) must be made before October 2, 1984. In addition to making the election in the manner prescribed under such section 1362 and the regulations thereunder, the commodities dealer or options dealer must indicate on Form 2553 that the election is made under section 102(d)(3) of the Act. Although section 102(d)(3) of the Act applies to dealers not covered by this paragraph, and such dealers may make an election under such section 102(d)(3), guidelines for making such an election are not provided in this paragraph and are forthcoming.

(m) *Election with respect to treatment of S termination year.* For the election provided under section 1362(e)(3), as amended by section 721(h) of the Act, see § 18.1362-4 of this chapter.

(n) *Election to be an S corporation; certain short taxable years.* For the election provided under section 1362(b), as amended by section 721(l) of the Act, see § 18.1362-1(b) of this chapter.

(o) *Election with respect to subchapter S passive investment income rules.* For the election provided under section 721(i) of the Act which amends section 6(b) of the Subchapter S Revision Act of 1982, see § 18.1362-5 of this chapter.

(p) *Election with respect to subchapter S distributions during certain post-termination transition periods.* For the election provided under section 1371(e), as

amended by section 721(o) of the Act, see § 18.1371-1 of this chapter.

(q) *No elections for closed year.* Any election under this section which is allowed to be made by filing an amended return may only be made if the period for making a claim for refund or credit with respect to the taxable year for which such election is to be effective has not expired. This paragraph shall not apply to the election under paragraph (a)(2)(iv) of this section with respect to the election under section 1078 of the Act.

(r) *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 herein. In such event the later regulations or revenue procedures will provide guidance with respect to the furnishing of such additional information.

[T.D. 7976, 49 FR 35487, Sept. 10, 1984; T.D. 7976, 49 FR 43640, Oct. 31, 1984; 49 FR 43951, Nov. 1, 1984, as amended by T.D. 8062, 50 FR 46004, Nov. 6, 1985. Redesignated by T.D. 8435, 57 FR 43895, Sept. 23, 1992; T.D. 9172, 70 FR 296, Jan. 4, 2005]

**§ 301.9100-7T Time and manner of making certain 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 the 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) through (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) .....	168(b)(5) .....	Election to depreciate property using the straight line method of recovery with respect to one or more classes of property for any taxable year	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) .....	168(f)(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) .....	168(g)(7) .....	Election to use alternative depreciation system with respect to one or more classes of property for any taxable year (except for residential rental or non-residential real property where the election may be made separately with respect to each property)	Property placed in service after 12-31-86. Election must be made for taxable year in which property is placed in service. Except for residential rental or non-residential real property, election shall apply to all property in the class placed in service during the taxable year for which the election is made.
201(a), 1802(a)	168(h)(6)(F)(ii), 168(j) (as in effect before October 22, 1986).	Election by a tax-exempt controlled entity to treat any gain recognized by the tax-exempt parent on any disposition of an interest in the tax-exempt controlled entity (and to treat any dividends or interest received or accrued from the tax-exempt controlled entity) as unrelated business taxable income under Code section 511 in order for the tax-exempt controlled entity to not be treated as a tax-exempt entity (or as a successor to a tax-exempt entity)	Property placed in service after 9-27-85, but can apply to property placed in service before such date if the tax-exempt controlled entity so elects. [See paragraph (a)(3)(ii) of this section.]
203(a)(1)(B) .....	.....	Election to apply Act section 201 (including all elections within section 201)	Property placed in service after 7-31-86 and before 1-1-87.
204(e) .....	.....	Election to have Act section 201 either (i) not apply to any property placed in service during 1987 or 1988 which is replacement property for property lost, damaged or destroyed in a flood which occurred 11-3-85 through 11-7-85 and which was declared a natural disaster area by the President of the United States, or (ii) apply to all such replacement property placed in service during 1985 or 1986	(i) Property placed in service during 1987 or 1988; or (ii) property placed in service during 1985 or 1986.
243(a) .....	.....	Election to begin the 60 month amortization period with the first month of the taxpayer's first taxable year beginning after 11-19-82 in lieu of the 11-19-82 date or the bus operating authority acquisition date	Bus operating authorities held on 11/19/82, or acquired after that date under a written contract that was binding on that date.
243(b) .....	.....	Election to begin the 60 month amortization period on the first month of the taxpayer's first taxable year beginning after the deregulation month in lieu of the deregulation month	Freight forwarder operating authorities held at the beginning of the 60 month period applicable to the taxpayer (i.e., the deregulation date or the first month of the first taxable year beginning after the deregulation date).
243 (a), (b) .....	.....	Election by a qualified corporate taxpayer to allocate a portion of the cost basis of a qualified acquiring corporation in the stock of an acquired corporation to the basis of the authority	For bus operating authorities: authorities held on 11/19/82, or acquired after that date under a written contract that was binding on that date. For freight forwarders: authorities held at the beginning of the 60-month period applicable to the taxpayer.
252(a) .....	42(f)(1) .....	Election concerning beginning of credit period for low-income housing credit	Buildings placed in service after 12-31-86 and before 1-1-90 (before 1-1-91 for buildings described in Code section 42(n)(2)(B)). [See paragraph (b) of this section.]
252(a) .....	42(g)(1) .....	Election concerning qualified low-income housing project to either satisfy the 20-50 or the 40-60 occupancy test	Buildings placed in service after 12-31-86 and before 1-1-90 (before 1-1-91 for buildings described in Code section 42(n)(2)(B)). [See paragraph (b) of this section.]

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Section of Act	Section of Code	Description of Election	Availability of Election
252(a) .....	42(i)(2) .....	Election to reduce eligible basis by outstanding balance of Federal loan subsidy	Buildings placed in service after 12-31-86 and before 1-1-90 (before 1-1-91 for buildings described in Code section 42(n)(2)(B)). [See paragraph (b) of this section.]
252(a) .....	42(j)(5) .....	Election to have certain partnerships treated as the taxpayer eligible for low-income housing credit	Buildings placed in service after 12-31-86 and before 1-1-90 (before 1-1-91 for buildings described in Code section 42(n)(2)(B)). [See paragraph (b) of this section.]
311(d)(2) .....	.....	Revocation of prior election under Code section 631(a).	Election for taxable years beginning before 1-1-87 may be revoked for taxable years ending after 12-31-86.
411(b)(1) .....	263(i) .....	For intangible drilling and development costs paid or incurred with respect to an oil, gas, or geothermal well located outside the United States, election to include such costs in adjusted basis for purposes of computing the amount of any deduction under Code section 611 (without regard to section 613).	Costs paid or incurred after 12-31-86 in taxable years ending after such date. [See paragraph (a)(2)(iii) of this section.]
411(b)(2) .....	616(d) .....	For expenditures paid or incurred with respect to the development of a mine or other natural deposit (other than an oil, gas, or geothermal well) located outside the United States, election to include such expenditures paid or incurred during the taxable year for which made in adjusted basis for purposes of computing the amount of any deduction under Code section 611 (without regard to section 613)	Costs paid or incurred after 12-31-86 in taxable years ending after such date. [See paragraph (a)(2)(iv) of this section.]
411(b)(2) .....	617(h) .....	For expenditures paid or incurred before the development stage for the purpose of ascertaining the existence, location, extent or quality of any deposit of ore or other mineral deposit (other than an oil, gas or geothermal well) located outside the United States, election to include all such expenditures, paid or incurred during the taxable year with respect to any such deposit, in adjusted basis for purposes of computing the amount of any deduction under Code section 611 (without regard to section 613)	Costs paid or incurred after 12-31-86 in taxable years ending after such date. [See paragraph (a)(2)(v) of this section.]
501(a) .....	469(j)(9) .....	Election to increase basis of property by amount of disallowed credit for purposes of determining gain or loss from a disposition of property used in a passive activity	Taxable years beginning after 12-31-86. [See paragraph (a)(3)(iii) of this section.]
614(b) .....	1059(c)(4) .....	Election to determine whether a dividend is extraordinary by reference to the fair market value of the share of stock with respect to which the dividend was received	Dividends declared after July 18, 1986 in taxable years ending after such date.
644(d) .....	216(b)(3) .....	Election by a cooperative housing corporation to allocate real estate taxes or interest or both to each tenant-stockholder's dwelling unit in a manner which reasonably reflects the cost to the corporation of the tenant-stockholder's dwelling unit	Taxable years beginning after 12-31-86. [See paragraph (a)(3)(iv) of this section.]
646 .....	.....	Election by an entity to be treated as a trust under the Internal Revenue Code if such entity was created in 1906 as a common law trust and governed by the trust laws of the State of Minnesota, receives royalties from iron ore leases, and income interests in the entity are publicly traded on a national stock exchange	The election is effective beginning on the first day of the first taxable year beginning after October 22, 1986 and following the year in which the election is made. Such election must be made by the board of trustees of such entity and must be accompanied by a written agreement signed by the board of trustees of the entity.

Section of Act	Section of Code	Description of Election	Availability of Election
651 .....	4982(e)(4) .....	Election by a regulated investment company to use taxable years ending on 11-30 or 12-31 for purposes of computing capital gain net income under Code section 4982	Calendar years beginning after 12-31-86. [See paragraph (a)(2)(vi) of this section.]
701(a) .....	56(f)(3)(B) .....	Election to have amount of net book income be equal to amount of earnings and profits	Taxable years beginning after 12-31-86.
801(a) .....	448(d)(4) .....	Election of common parent of an affiliated group that all members of such group be treated as one taxpayer if substantially all the activities of all members of the affiliated group involve performance of services in the same field	Taxable years beginning after 12-31-86.
801(d)(2) .....	.....	Election to continue using the cash method of accounting for loans, leases and related party transactions	Loans, leases and related party transactions entered into before 9-26-85.
802 .....	474 .....	Election by certain small businesses to use the simplified dollar-value LIFO method	Taxable years beginning after 12-31-86. [See paragraph (a)(3)(v) of this section.]
803(a) .....	263A(d)(3) .....	Election to have rules of Code section 263A (relating to capitalization and inclusion in inventory costs of certain expenses) not apply to any plant or animal produced in any farming business conducted by the electing taxpayer	Unless consent is obtained from the Commissioner, the first taxable year beginning after 12-31-86 during which the taxpayer engages in a farming business. [See paragraph (c) of this section.]
806(e)(2)(C) .....	.....	Election to have net income for the short taxable year of a partnership or S corporation which results from the required change in accounting period included entirely in income for such short taxable year	Partner and shareholder taxable years beginning after 12-31-86 with or within which the short taxable year created under section 806 of the Act ends. [See paragraph (d) of this section.]
.....	.....	Election to reduce partnership or S corporation income for the short taxable year resulting from a required change in accounting period under section 806 of the Act by an unamortized adjustment amount existing as of October 22, 1986, where such adjustment was required to effectuate a previous accounting period change under Rev. Proc. 72-51, 1972-2 C.B. 832 or Rev. Proc. 83-25, 1983-1 C.B. 689	Short taxable years of partnerships or S corporations beginning after 12-31-86. [See paragraph (e) of this section.]
811(a) .....	453C(b)(2)(B) .....	Election to compute adjusted bases using depreciation deduction used under Code section 312(k)	Taxable years ending after 12-31-86 with respect to dispositions made after 2-28-86.
811(a) .....	453C(e)(4) .....	Election to have Code section 453C not apply to obligations arising from sales of timeshares and unimproved residential lots to individuals	Taxable years ending after 12-31-86 with respect to dispositions made after 2-28-86. [See paragraph (a)(3)(vi) of this section.]
905(a) .....	165(l)(1) .....	Election to treat amount of reasonably estimated loss on a deposit in insolvent or bankrupt qualified financial institution as a loss described in Code section 165(c)(3) and incurred in the taxable year	Taxable years beginning after 12-31-81. [See the cross-reference in paragraph (f) of this section.]
905(c) .....	.....	Election to apply Code section 451(f) (relating to treatment of interest on frozen deposits in certain financial institutions)	Taxable years beginning after 12-31-82 and before 1-1-87.
1301(b) .....	141(b)(9) .....	Election by issuer of tax-exempt bonds to treat a portion of an issue as a qualified 501(c)(3) bond if such portion would have qualified as a 501(c)(3) bond had it been issued separately	Bonds issued after 8-15-86. [See paragraph (g) of this section.]
1301(b) .....	142(d)(1) .....	Election by issuer of tax-exempt bonds for residential rental property to satisfy either the 20-50 or the 40-60 occupancy test	Bonds issued after 8-15-86. [See paragraph (g) of this section.]
1301(b) .....	142(d)(4)(B) .....	Election by issuer of tax-exempt bonds for residential rental property to treat the project as a deep rent skewed project	Bonds issued after 8-15-86. [See paragraph (g) of this section.]
1301(b) .....	143(k)(9)(D)(iii) .....	Election to treat limited equity cooperative housing as residential rental property and not as owner-occupied housing	Bonds issued after 8-15-86 and before 1-1-89. [See paragraph (g) of this section.]

Section of Act	Section of Code	Description of Election	Availability of Election
1301(b) .....	145(d) .....	Election by issuer of tax-exempt bonds to have Code section 145 not apply to the issue if the issue is an issue of exempt facility bonds or qualified redevelopment bonds, to which the volume cap applies	Bonds issued after 8-15-86. [See paragraph (g) of this section.]
1301(b) .....	147(b)(4)(A) .....	Election by issuer of qualified 501(c)(3) bonds to have such bonds treated as meeting the limitation on maturity requirements of Code section 147(b)(1) if the requirements of section 147(b)(4)(B) are met	Bonds issued after 8-15-86. [See paragraph (g) of this section.]
1704(b) .....	.....	Election to revoke prior election under Code section 1402(e) (relating to exemption from social security taxes for certain clergy)	Remuneration received in taxable years ending on or after October 22, 1986. [See paragraph (h) of this section.]
1801(a) .....	168(i) (as in effect before October 22, 1986).	Election to make finance leasing rules inapplicable to property which would otherwise be subject to them under the transitional rules of section 12(c)(1) of the Tax Reform Act of 1984	Personal property leased under certain lease agreements effective on or after 1-1-84. [See paragraph (a)(3)(vii) of this section.]
1804(e)(4) .....	.....	Election by a common parent of an affiliated group to apply amendments made by the Tax Reform Act of 1984 for taxable years beginning after 12-31-83	Groups which include a corporation which on 6-22-84 is a member of the group which files a consolidated return for such corporation's taxable year which includes 6-22-84.
1807(a)(7) .....	468B .....	Election to treat a qualified payment made to a court-ordered fund as a payment made to a designated settlement fund	Generally, liabilities arising out of personal injury, death or property damage that are incurred after 7-18-84 under law in effect before the enactment of Code section 461(h). Election is made for the taxable year in which qualified payments are made to a designated settlement fund.
1809(e)(2) .....	48(b)(2) .....	Election by lessee and lessor not to apply the rule of Code section 48(b)(2) concerning the date leased property is treated as originally placed in service	Property originally placed in service after 4-11-84 (as determined under Code section 48(b) prior to its amendment by section 114(a) of the Tax Reform Act of 1984). [See paragraph (a)(3)(viii) of this section.]
1810(1)(4) .....	7701(b) .....	Election to be treated as a resident alien	Taxable years beginning after December 31, 1984. [See paragraph (a)(3)(ix) of this section.]
1879(p)(1) .....	83(c)(3) .....	Election to treat certain stock acquired upon the exercise of nonqualified stock options as subject to a substantial risk of forfeiture by reason of Code section 83(c)(3) even though the transfer of stock pursuant to such exercise occurred before 1-1-82, the effective date of section 83(c)(3)	Transfers of stock described in section 1879(p)(1) of the Act. [See paragraph (a)(2)(vii) and (a)(3)(x) of this section.]
1882(c) .....	3121(w)(2) .....	Election to revoke prior election under Code section 3121(w) (relating to exemption from social security taxes for certain churches and qualified church-controlled organizations)	Remuneration paid after 12-31-86 unless such electing church or church-controlled organization had withheld and paid over all employment taxes due, as if such election had never been in effect during the period from the stated effective date of the election being revoked through 12-31-86. [See paragraph (i) of this section.]

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

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

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

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

(iii) *Time for making the election with respect to foreign intangible drilling costs.* With respect to the election under Act section 411(b)(1) (Code section

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

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

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

(vi) *Time for making certain elections by regulated investment companies.* The election under Act section 651 (Code section 4982(e)(4)) shall be made on a statement attached to the form prescribed by the Internal Revenue Service which is used to report and pay the excise tax liability under section 4982. The election shall be filed on or before the later of—

(A) 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, or

(B) If the regulated investment company has been granted an extension of time to file a return for the excise tax under Code section 4982 for such excise tax period, the due date (including extensions thereof) for such return.

The statement of election under section 4982(e)(4) shall be attached to the prescribed form regardless of whether the regulated investment company is liable for the excise tax imposed by

section 4982 for the excise tax period in question.

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

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

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

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

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

(B) Identify the election,

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

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

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

(ii) *Special rules for making the transitional rule elections with respect to certain tax-exempt controlled entities.* The irrevocable election under Act sections

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

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

(iv) *Special rules for making the election with respect to cooperative housing corporations.* The election under Act section 644(d) (Code section 216(b)(3)(B)(ii)) may be made by a cooperative housing corporation with respect to its real estate taxes or interest or both. The election is available for any taxable year beginning after December 31, 1986, if the cooperative housing corporation has, by January 31 of the year following the first calendar year that includes any period to which the election applies, furnished to each tenant-stockholder during that period a written statement showing the amount of the allocation (or allocations) under section 216(b)(3)(B)(i) attributable to such tenant-stockholder's dwelling unit (or units) for that period. Any cooperative housing corporation making the election shall do so in accordance with paragraphs (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 the election to have section 453C not apply to obligations arising from sales of timeshares and unimproved residential lots to individuals.* The election under Act section 811(a) (Code section 453C(e)(4)) to have section 453C not apply to obligations arising from sales of timeshares and unimproved residential lots to individuals may be made with respect to any obligation, or with respect to a class of such obligations. In the case of an election made with respect to a class of obligations, such election shall describe the class of obligations with such specificity as to make the class readily identifiable.

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

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

(ix) *Special rules for making the election to be treated as a resident alien.* The election under Act section 1810(1)(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	Code Sections
201(a)	168(b)(5), 168(f)(1), 168(g)(7), 168(h)(6)(F)(ii)
203(a)(1)(B), 252(a)	42(f)(1), 42(g)(1), 42(i)(2), 42(j)(5)
411(b)(1)	263(i)
411(b)(2)(A)	616(d)(2)(A)
501(a)	469(j)(9)
801(d)(2), 905(c), 1301(b)	141(b)(9), 142(d)(1), 142(d)(4)(B), 143(k)(9)(D)(iii), 145(d), 147(b)(4)(A)
1704(b), 1802(a)	168(j) as in effect before October 22, 1986
1804(e)(4), 1879(p)(1)	83(c)(3)
1882(c)	3121(w)(2)

are irrevocable.

(ii) *Elections revocable with the consent of the Commissioner.* The elections described in this section under:

Act Sections	Code Sections
204(e), 243(a), 243(b), 243(a)(b), 411(b)(2)(B)	617(h)(2)(A)
614(b)	1059(c)(4)
644(d)	216(b)(3)
646, 651	4982(e)(4)(B)
701(a)	56(f)(3)(B)
801(a)	448(d)(4)
802	474
803(a)	263A(d)(3)
806(e)(2)(C) and the election described in H.R. Rep. No. 99-841 at II-320, 811(a)	453C(b)(2)(B)(i), 453C(e)(4)
905(a)	165(l)(1)
1801(a)	168(j) as in effect before October 22, 1986
1807(a)(7)	468B
1809(e)(2)	48(b)(2)
1810(l)(4)	7701(b)

are revocable only with the consent of the Commissioner.

(iii) *Freely revocable election.* The election described in this section under Act section 311(d)(2) is freely revocable.

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

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

(2) *Time and manner of making the election.* Unless consent is obtained from the Commissioner, the election may only be made for the taxpayer's first taxable year that begins after December 31, 1986, and during which the taxpayer engages in a farming business. The election shall be made on the Schedule E, F or other schedule required to be attached to the income tax return for the first taxable year for which the election is effective. In the case of a partnership or S corporation, the election must be made at the partner or shareholder level.

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

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

(5) *Special rules for treatment of expenses.* If the election is made, the plant or animal produced is treated as section 1245 property and gain is recaptured (treated as ordinary income) in the amount of deductions which, but for the election, would have been required to be capitalized with respect to the plant or animal. If the taxpayer or a related person makes the election, a non-accelerated method of depreciation (as defined in section 168(g)(2)) shall be applied to all property used predominantly in any farming business of the taxpayer or related person and placed in service in any taxable year during which the election is in effect. For purposes of this election, related party means: (i) The members of the taxpayer's family (defined for this purpose to include the spouse of the taxpayer and any of 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. 99-841 at II-320.

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

(3) *Partnerships 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) *Cross-reference.* See § 301.9100-8(d) for rules on both the election under section 905(a) of the Act, relating to section 165(l)(1), and the related election under section 165(l)(5), added by section 1009(d) of the Technical and Miscellaneous Revenue Act of 1988, 102 Stat. 3342. An election under section 165(l) is available only to qualified individuals and, in general, applies to reasonably estimated losses on deposits in an insolvent or bankrupt financial institution.

(g) *Elections with respect to certain bonds.* The elections under Act section 1301(b) (Code sections 141(b)(9), 142(d)(1), 142(d)(4)(B), 143(k)(9)(D)(iii), 145(d), and 147(b)(4)(A)) must be made in the 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 ending on or after October 22, 1986, or 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.* If 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 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 revocations made under this paragraph (i).

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

(4) *Effective date of this paragraph.* A revocation made under this paragraph (i) shall be effective for the quarter of the calendar year covered by the Form 941 on which the revocation is made in accordance with paragraph (i)(2) of this section and all subsequent quarters. However, no revocation shall be effective prior to January 1, 1987 unless

such electing church or church-controlled organization had withheld and paid over all employment taxes due, as if such election had never been in effect, during the period from the effective date of the election being revoked through December 31, 1986.

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

[T.D. 8124, 52 FR 3624, Feb. 5, 1987; 52 FR 8405, Mar. 17, 1987; 52 FR 10085, Mar. 30, 1987, as amended by T.D. 8180, 53 FR 6147, Mar. 1, 1988; T.D. 8267, 54 FR 38980, Sept. 22, 1989. Redesignated and amended by T.D. 8435, 57 FR 43895, 43896, Sept. 23, 1992; T.D. 8513, 58 FR 68764, 68765, Dec. 29, 1993; T.D. 8530, 59 FR 12844, Mar. 18, 1994; T.D. 8644, 60 FR 66926, Dec. 27, 1995]

**§ 301.9100-8 Time and manner of making certain elections under the Technical and Miscellaneous Revenue Act of 1988.**

(a) *Miscellaneous elections—(1) Elections to which this paragraph applies.* This paragraph applies to the elections set forth below provided under the Technical and Miscellaneous Revenue Act of 1988, 102 Stat. 3342 (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 the 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) through (i) of this section. In this paragraph (a)(1), a cross-reference to a special rule applicable to an election is shown in brackets at the end of the description of the "Availability of Election." Paragraph (j) of this section lists certain elections provided under the Act that are not addressed in this section. Paragraph (k) of this section provides that additional information with respect to elections may be required by future regulations or revenue procedures.