

SUPPORTING STATEMENT

REG-168745-03, Guidance Regarding Deduction and Capitalization of
Expenditures Related to Tangible Property

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The final regulations provide guidance on the application of sections 162(a) and 263(a) of the Internal Revenue Code to amounts paid to acquire, produce, or improve tangible property and clarifies and expands the standards in the current regulations under these sections. Final regulations under section 167 regarding accounting for and retirement of depreciable property and section 168 regarding accounting for MACRS property other than general asset accounts are also codified under TD 9664. The final regulations will affect all taxpayers that acquire, produce, or improve tangible property.

The notice of proposed rulemaking (NPRM) REG-168745-03, published December 27, 2011, at 76 FR 81128, contained no information collection requirements; and, therefore did not require OMB clearance. In response to comments received after publication of the NPRM, three elections are to be provided to ease taxpayer compliance with the final tangible property regulations under Internal Revenue Code section 263(a). The information collection requirement in the form of an election statement attached to a federal income tax return for those taxpayers who choose to utilize any of three safe harbors provided in the final regulations in sections 1.263(a)-1(f)(5), 1.263(a)-3(h)(6), and 1.263(a)-3(n)(2).

2. USE OF DATA

The election statement filed with a federal income tax return will notify the IRS that a taxpayer is using one of the safe harbors provided in the final tangible property regulations to obtain beneficial treatment for the amounts that qualify for these elections.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Electronically collected to the extent federal income tax filing requirements permit electronic filing.

4. EFFORTS TO IDENTIFY DUPLICATION

N/A

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

The elections themselves are part of a rule designed to minimize burden on small businesses or other small entities by allowing them to utilize a simplified method for deducting repair or replacement costs for buildings (§ 1.263(a)-3(h)(6)) or to follow their financial statement method of reporting the costs of repairing, replacing, or improving tangible property (§§ 1.263(a)-1(f)(5) and 1.263(a)-3(n)(2)).

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Without an election statement, there is no means of verifying whether a taxpayer intended to utilize a safe harbor in reporting its calculation of annual taxable income, or whether a mistake was made. The inability to readily verify whether a safe harbor election was made could result in innumerable hours being spent on dispute resolution between taxpayers and the IRS.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

The three written election statements contained in the final tangible property regulations are not inconsistent with guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

On December 27, 2011, the IRS published temporary regulations in the **Federal Register** regarding the deduction and capitalization of expenditures related to tangible property (T.D. 9564; 76 FR 81060-01) (2011 temporary regulations), withdrew the 2008 proposed regulations, and published new proposed regulations (REG-168745-03; 76 FR 81128) (2011 proposed regulations) that cross-referenced the text of the 2011 temporary regulations. The 2011 temporary regulations initially applied to taxable years beginning on or after January 1, 2012.

The IRS received numerous written comments in response to the 2011 temporary and proposed regulations and held a public hearing on May 9, 2012. After considering the comment letters and the statements at the public hearing, the IRS published Notice 2012-73, 2012-51 I.R.B. 713, on November 20, 2012, announcing that, to assist taxpayers in their transitions to the 2011 temporary regulations and final regulations, the IRS would change the applicability date of the 2011 temporary regulations to taxable years beginning on or after January 1, 2014, while permitting taxpayers to choose to apply the 2011 temporary regulations to taxable years beginning on or after January 1, 2012, and before the applicability date of the final regulations.

The Notice also alerted taxpayers that the IRS intended to publish final regulations in 2013 and expected the final regulations to apply to taxable years beginning on or after January 1, 2014, but that the final regulations would permit taxpayers to apply its provisions to taxable years beginning on or after January 1, 2012.

On December 17, 2012, the IRS published a technical amendment to T.D. 9564, which amended the applicability date of the 2011 temporary regulations to taxable years beginning on or after January 1, 2014, while permitting taxpayers to choose to apply the 2011 temporary regulations to taxable years beginning on or after January 1, 2012, and before the applicability date of the final regulations.

After considering all of the comment letters and the statements made at the public hearing on the 2011 temporary and proposed regulations, the IRS is removing the 2011 temporary regulations under sections 162, 165, 167, 263(a), 263A, 1016, and §1.168(i)-7 and is issuing final regulations. The IRS is also removing the 2011 proposed regulations and are issuing new proposed regulations regarding the disposition of property subject to section 168.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

N/A

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

All statements included as a part of a return of federal income tax are subject to the confidentiality and disclosure restrictions imposed by 26 USC § 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

N/A

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collection of information in this regulation is in §§1.263(a)-1(f)(5), 1.263(a)-3(h)(6), and 1.263(a)-3(n)(2). This information is required in order for a taxpayer to elect to use the de minimis rule, to elect to use the safe harbor for small taxpayers, and to elect to capitalize repair and maintenance costs. This information will inform the IRS that the taxpayer is electing to use these provisions, which allows taxpayers to obtain beneficial treatment for the amounts that qualify for these elections.

The likely respondents are business or other for-profit institutions, and small businesses or organizations.

- Estimated total annual reporting burden: 1,100,000 hours.
- Estimated annual burden hours per respondent varies from .25 hours to .5 hours, depending on individual circumstances, with an estimated average of .25 hours (the time to complete the election statement).
- Estimated number of respondents: 4,000,000.
- Estimated frequency of responses: Annually.

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

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

In general, the safe harbor elections provided should reduce the federal income tax compliance burden for reporting taxpayers by providing simplified methods for determining the costs of tangible property that may be deducted and the costs subject to capitalization. The safe harbors imposing the information collection requirement impose the additional requirement of attaching a statement to a federal tax return.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

N/A

15. REASONS FOR CHANGE IN BURDEN

This is a new collection.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

N/A

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB PRA SUBMISSION FORM

N/A