

§ 12.9

26 CFR Ch. I (4-1-10 Edition)

for credit or refund of tax with respect to the taxable year for which the election is to apply.

(2) *Manner of making election.* Except as provided in the following sentence, an election by the taxpayer with respect to a taxable year shall be made by a statement containing the information described in paragraph (d)(3) of this section which is—

(i) Attached to the taxpayer's return or amended return for such taxable year,

(ii) Attached to a timely filed claim by the taxpayer for credit or refund of tax for such taxable year, or

(iii) Filed by the taxpayer with the director of the Internal Revenue Service Center where the return for such taxable year was filed.

In the case of a taxable year ending before July 1, 1973, no formal statement of election is necessary if the taxpayer's return took into account an election under paragraph (b) or (c) of this section; the taxpayer will be considered to have made an election in accordance with the manner in which leases with respect to parcels of real property described in paragraph (b) of this section, or leases of property which has been in use for more than 5 years as described in paragraph (c) of this section, are treated in the return.

(3) *Statement.* The statement described in paragraph (d)(2) of this section shall contain the following information:

(i) The name, address, and taxpayer identification number of the taxpayer;

(ii) The taxable year to which the election is to apply if the statement is not attached to the return or a claim for credit or refund;

(iii) A description of any leases which are to be treated as a single lease; and

(iv) A description of any real property in use for more than 5 years to which the expense test is not to apply.

(4) *Revocation of election.* An election made pursuant to this paragraph may be revoked within the time prescribed in paragraph (d)(1) of this section for making an election and may not be revoked thereafter. Any such revocation shall be made in the manner prescribed by paragraph (d)(2) of this section for the making of an election.

(e) *Election by members of partnership.* Under section 703(b) (as amended by section 304(c) of the Revenue Act of 1971), any election under section 57(c) or 163(d)(7) with respect to property held by a partnership shall be made by each partner separately, rather than by the partnership. If an election made by a taxpayer under paragraph (b) of this section applies in whole or in part to property held by a partnership, the taxpayer shall, in applying the expense test referred to in paragraph (a) of this section, take into account his distributive share of the deductions of the partnership with respect to the property for the taxable year allowable solely by reason of section 162 (other than rents and reimbursed amounts with respect to the property) and also his distributive share of the partnership's rental income from such property for the taxable year.

[T.D. 7271, 38 FR 9296, Apr. 13, 1973]

§ 12.9 Election to postpone determination with respect to the presumption described in section 183(d).

(a) *In general.* An individual, electing small business corporation, trust or estate may elect in accordance with the rules set forth in this section to postpone a determination whether the presumption described in section 183(d) applies with respect to any activity in which the taxpayer engages until after the close of the fourth taxable year (sixth taxable year, in the case of an activity described in § 1.183-1(c)(3)) following the taxable year in which the taxpayer first engages in such activity. The election must be made in accordance with the applicable requirements of paragraphs (b), (c) and (d) of this section. Except as otherwise provided in paragraphs (c) and (e) of this section, an election made pursuant to this section shall be binding for the first taxable year in which the taxpayer first engages in the activity and for all subsequent taxable years in the five (or seven) year period referred to in the first sentence of this paragraph. For purposes of this section, a taxpayer shall be treated as not having engaged in an activity during any taxable year beginning before January 1, 1970.

(b) *Period to which an election applies.* An individual, trust, estate, or small

business corporation may make the election. The five year presumption period (seven year presumption period in the case of an activity described in §1.183-1(c)(3)) to which the election shall apply shall be the five (or seven) consecutive taxable years of such taxpayer beginning with the taxable year in which such taxpayer first engages in the activity. For purposes of this section, a taxpayer who engages in an activity as a partner, engages in it in each of his taxable years with or without which ends a partnership year during which the activity was carried on by the partnership.

(c) *Time for making an election.* A taxpayer who is an individual, trust, estate or small business corporation may make the election provided in §183(e) by filing the statement and consents required by paragraph (d) of this section within—

(1) 3 years after the due date of such taxpayer's return (determined without extensions) for the taxable year in which such taxpayer first engages in the activity, but not later than

(2) 60 days after such taxpayer receives a written notice (if any) from a district director that the district director proposes to disallow deductions attributable to an activity not engaged in for profit under section 183.

The provisions of paragraph (c)(2) of this section shall in no event be construed to extend the period described in (c)(1) of this section for making such election. Notwithstanding the time periods prescribed in paragraph (c) (1) and (2) of this section, if no election has been made before a suit or proceeding described in section 7422(a) is maintained or a petition is filed in the Tax Court for a redetermination of a deficiency for any taxable year within the presumption period to which the election would apply, no election may be made except with the consent of the Commissioner which will not be given unless no appreciable delay in the suit or proceeding will be caused.

(d) *Manner of making election.* (1) The election shall be made by the individual, trust, estate, or electing small business corporation, as the case may be, engaged in the activity, by filing a statement which sets forth the following information—

(i) The name, address, and taxpayer identification number of such taxpayer, and, if applicable, of the partnership in which he engages in the activity,

(ii) A declaration stating that the taxpayer elects to postpone a determination as to whether the presumption described in section 183(d) applies until after the close of the taxpayer's fourth taxable year (sixth taxable year, in the case of an activity described in §1.183-1(c)(3)) following the taxable year in which the taxpayer first engaged in such activity and identifying that first such taxable year, and,

(iii) A description of each activity (as defined in §1.183-1(d)(1)) with respect to which the election is being made.

(2) For an election to be effective, there must be attached to the statement properly executed consents, in the form prescribed by the Commissioner, extending the period prescribed by section 6501 for the assessment of any tax to a date which is not earlier than 18 months after the due date of the return (determined without extensions) for the final year in the presumption period to which the election applies, as follows:

(i) Consents for each of the taxpayer's taxable years in the presumption period to which the election applies,

(ii) If the election is made by an electing small business corporation, a consent of each person who is a shareholder during any taxable year to which the election applies, for each of such shareholder's taxable years with or within which end each of the corporation's taxable years in the presumption period,

(iii) If a taxpayer referred to in paragraph (d)(2)(i) of this section or shareholder referred to in paragraph (d)(2)(ii) of this section is married at the time of the election, in the case of his present spouse, a consent for each of such spouse's taxable years which correspond to the taxable years (other than prior years of the shareholder during no part of which he was a shareholder) for which consents are required by paragraph (d)(2) (i) or (ii) of this section as the case may be.

Such consents shall not be construed to shorten the period described in section 6501 for any taxable year within the presumption period to which the election applies.

(3) The statement, with the required consents attached, shall be filed—

(i) With the service center at which the taxpayer making the election is required to file his return, or

(ii) If the taxpayer is notified by a district director that, pursuant to section 183 he is proposing to disallow deductions with respect to an activity not engaged in for profit, with such district director.

(e) *Subsequent invalidations.* If, after a timely election has been made, but still within the presumption period, a suit or proceeding (as described in section 7422(a)) is maintained by the electing taxpayer, a shareholder referred to in paragraph (d)(2)(ii) of this section, or spouse referred to in paragraph (d)(2)(iii) of this section for any taxable year for which a consent is required by this section and the taxpayer, shareholder, or spouse has not been issued a notice of deficiency (as described in section 6212(a)) with respect to such taxable year, such election shall not be effective to postpone the determination whether the presumption applies, for such taxable year, but the consents extending the statute of limitations filed with the election shall not thereby be invalidated. The immediately preceding sentence shall not apply to a suit or proceeding maintained by the spouse of an electing taxpayer for a taxable year for which such spouse has filed a separate return, or a suit or proceeding maintained by a shareholder for a taxable year in which he was not such a shareholder. An election by an individual taxpayer or electing small business corporation, shall be subsequently invalidated for all years in the presumption period to which it had applied if—

(1) The electing taxpayer or shareholder taxpayer files a joint return for one of the first three (five, in the case of an activity described in §1.183-1(c)(3)) taxable years in such presumption period, and

(2) The spouse with whom he files such joint return has not previously

executed a consent described in paragraph (d)(2)(iii) of this section, and

(3) Within one year after the filing of such joint return (or, if later, 90 days after March 14, 1974), such spouse has not filed a consent described in paragraph (d)(2) of this section.

An election by an electing small business corporation shall be invalidated for all years in the presumption period to which it applies if a person who was not a shareholder on the date of election becomes a shareholder during the first three (or five) years of the presumption period to which the election applies and does not, within 90 days after the date on which he becomes a shareholder (or, if later, 90 days after March 14, 1974), file a consent required by paragraph (d)(2) of this section. Invalidation of the election by operation of this paragraph will in no case affect the validity of the consents filed with such election.

(f) *Extension of time for filing election in hardship cases.* The Commissioner may upon application by a taxpayer, consent to an extension of time prescribed in this section for making an election if he finds that such an extension would be justified by hardship incurred by reason of the time at which this section is published. The burden will be on the taxpayer to establish that under the relevant facts the Commissioner should so consent.

[T.D. 7308, 39 FR 9947, Mar. 15, 1974]

PART 13—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969

Sec.

13.0-13.3 [Reserved]

13.4 Arbitrage bonds; temporary rules.

13.5-13.9 [Reserved]

13.10 Distribution of money in lieu of fractional shares.

13.11 Revocation of election to report income on the installment basis.

AUTHORITY: 26 U.S.C. 7805.

§§ 13.0-13.3 [Reserved]

§ 13.4 Arbitrage bonds; temporary rules.

(a) *In general*—(1) *Arbitrage bonds.* Section 103(d)(1) provides that any arbitrage bond (as such term is defined in