

Internal Revenue Service, Treasury

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- (ii) Certain break-up fees.
- (iii) Example.
- (e) Transaction costs.
- (1) Scope of facilitate.
- (i) In general.
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- (iv) Borrowing costs.
- (v) Special rule for stock redemption costs of open-end regulated investment companies.
- (2) Coordination with paragraph (d) of this section.
- (3) Transaction.
- (4) Simplifying conventions.
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- (iii) *De minimis* costs.
- (iv) Election to capitalize.
- (5) Examples.
- (f) 12-month rule.
- (1) In general.
- (2) Duration of benefit for contract terminations.
- (3) Inapplicability to created financial interests and self-created amortizable section 197 intangibles.
- (4) Inapplicability to rights of indefinite duration.
- (5) Rights subject to renewal.
- (i) In general.
- (ii) Reasonable expectancy of renewal.
- (iii) Safe harbor pooling method.
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- (1) In general.
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- (i) [Reserved].
- (j) Application to accrual method taxpayers.
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- (1) Examples.
- (m) Amortization.
- (n) Intangible interests in land [Reserved]
- (o) Effective date.
- (p) Accounting method changes.
- (1) In general.
- (2) Scope limitations.
- (3) Section 481(a) adjustment.

§ 1.263(a)-5 *Amounts paid or incurred to facilitate an acquisition of a trade or business, a change in the capital structure of a business entity, and certain other transactions.*

- (a) General rule.

- (b) Scope of facilitate.
- (1) In general.
- (2) Ordering rules.
- (c) Special rules for certain costs.
- (1) Borrowing costs.
- (2) Costs of asset sales.
- (3) Mandatory stock distributions.
- (4) Bankruptcy reorganization costs.
- (5) Stock issuance costs of open-end regulated investment companies.
- (6) Integration costs.
- (7) Registrar and transfer agent fees for the maintenance of capital stock records.
- (8) Termination payments and amounts paid to facilitate mutually exclusive transactions.
- (d) Simplifying conventions.
- (1) In general.
- (2) Employee compensation.
- (i) In general.
- (ii) Certain amounts treated as employee compensation.
- (3) *De minimis* costs.
- (i) In general.
- (ii) Treatment of commissions.
- (4) Election to capitalize.
- (e) Certain acquisitive transactions.
- (1) In general.
- (2) Exception for inherently facilitative amounts.
- (3) Covered transactions.
- (f) Documentation of success-based fees.
- (g) Treatment of capitalized costs.
- (1) Tax-free acquisitive transactions [Reserved].
- (2) Taxable acquisitive transactions.
- (i) Acquirer.
- (ii) Target.
- (3) Stock issuance transactions [Reserved].
- (4) Borrowings.
- (5) Treatment of capitalized amounts by option writer.
- (h) Application to accrual method taxpayers.
- (i) [Reserved].
- (j) Coordination with other provisions of the Internal Revenue Code.
- (k) Treatment of indirect payments.
- (1) Examples.
- (m) Effective date.
- (n) Accounting method changes.
- (1) In general.
- (2) Scope limitations.
- (3) Section 481(a) adjustment.

[T.D. 9107, 69 FR 444, Jan. 5, 2004]

§ 1.263(a)-1 Capital expenditures; In general.

(a) Except as otherwise provided in chapter 1 of the Code, no deduction shall be allowed for:

- (1) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate, or

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(2) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made in the form of a deduction for depreciation, amortization, or depletion.

(b) In general, the amounts referred to in paragraph (a) of this section include amounts paid or incurred (1) to add to the value, or substantially prolong the useful life, of property owned by the taxpayer, such as plant or equipment, or (2) to adapt property to a new or different use. Amounts paid or incurred for incidental repairs and maintenance of property are not capital expenditures within the meaning of subparagraphs (1) and (2) of this paragraph. See section 162 and § 1.162-4. See section 263A and the regulations thereunder for cost capitalization rules which apply to amounts referred to in paragraph (a) of this section with respect to the production of real and tangible personal property (as defined in § 1.263A-1T (a)(5)(iii)), including films, sound recordings, video tapes, books, or similar properties. An amount referred to in paragraph (a) of this section is a capital expenditure that is taken into account through inclusion in inventory costs or a charge to capital accounts or basis no earlier than the taxable year during which the amount is incurred within the meaning of § 1.446-1(c)(1)(ii). See section 263A and the regulations thereunder for cost capitalization rules that apply to amounts referred to in paragraph (a) of this section with respect to the production of real and tangible personal property (as defined in § 1.263A-2(a)(2)), including films, sound recordings, video tapes, books, or similar properties.

(c) The provisions of paragraph (a) (1) of this section shall not apply to expenditures deductible under:

(1) Section 616 and §§ 1.616-1 through 1.616-3, relating to the development of mines or deposits,

(2) Section 174 and §§ 1.174-1 through 1.174-4, relating to research and experimentation,

(3) Section 175 and §§ 1.175-1 through 1.175-6, relating to soil and water conservation,

(4) Section 179 and §§ 1.179-1 through 1.179-5, relating to election to expense certain depreciable business assets,

(5) Section 180 and §§ 1.180-1 and 1.180-2, relating to expenditures by farmers for fertilizer, lime, etc., and

(6) Section 182 and §§ 1.182-1 through 1.182-6, relating to expenditures by farmers for clearing land.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6794, 30 FR 792, Jan. 26, 1965; T.D. 8121, 52 FR 414, Jan. 6, 1987; T.D. 8131, 52 FR 10084, Mar. 30, 1987; T.D. 8408, 57 FR 12419, Apr. 10, 1992; T.D. 8482, 58 FR 42207, Aug. 9, 1993]

§ 1.263(a)-2 Examples of capital expenditures.

The following paragraphs of this section include examples of capital expenditures:

(a) The cost of acquisition, construction, or erection of buildings, machinery and equipment, furniture and fixtures, and similar property having a useful life substantially beyond the taxable year.

(b) Amounts expended for securing a copyright and plates, which remain the property of the person making the payments. See section 263A and the regulations thereunder for capitalization rules which apply to amounts expended in securing and producing a copyright and plates in connection with the production of property, including films, sound recordings, video tapes, books, or similar properties.

(c) The cost of defending or perfecting title to property.

(d) The amount expended for architect's services.

(e) Commissions paid in purchasing securities. Commissions paid in selling securities are an offset against the selling price, except that in the case of dealers in securities such commissions may be treated as an ordinary and necessary business expense.

(f) Amounts assessed and paid under an agreement between bondholders or shareholders of a corporation to be used in a reorganization of the corporation or voluntary contributions by shareholders to the capital of the corporation for any corporate purpose. Such amounts are capital investments and are not deductible. See section 118 and § 1.118-1.

(g) A holding company which guarantees dividends at a specified rate on the stock of a subsidiary corporation for