

§5c.168(f)(8)–9

26 CFR Ch. I (4–1–12 Edition)

(13) The property is leased under the provisions of section 168(f)(8)(D)(iii) and §5c.168(f)(8)–6(b)(3) and ceases to be a qualified mass commuting vehicle.

(14) The failure by the lessor to file the required information return described in §5c.168(f)(8)–2 (a)(3)(ii) by January 31, 1982, unless the lessee files such return by January 31, 1982.

(c) *Recapture.* The required amount of recapture of the investment tax credit and of accelerated cost recovery deductions after a disqualifying event shall be determined under sections 47 and 1245, respectively.

(d) *Consequences of loss of safe harbor protection.* The tax consequences of a disqualifying event depend upon the characterization of the parties without regard to section 168(f)(8). If the lessee would be the owner of the property without regard to section 168(f)(8), the disqualifying event will be deemed to be a sale of the qualified leased property by the lessor to the lessee. The amount realized by the lessor on the sale will include the outstanding amount (if any) of the lessor's debt on the property plus the sum of any other consideration received by the lessor. A disposition that results from a disqualifying event shall not be treated as an installment sale under section 453.

(e) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). M Corp. and N Corp. enter into a sale and leaseback transaction in which the leaseback agreement is characterized as a lease under section 168(f)(8) and M is treated as the lessor. In the second year of the lease, M becomes an electing small business corporation under subchapter S. The agreement ceases to be treated as a lease under section 168(f)(8) as of the date of the subchapter S election. Without respect to section 168(f)(8), N would be considered the owner of the property. The disqualification of M will be treated as a sale of the qualified leased property from M to N for the amount of the purchase money debt on the property then outstanding. M will realize gain or loss, depending upon its basis, with applicable investment tax credit and section 1245 recapture. N will acquire the property with a basis equal to the amount of the outstanding obligation. The property will not be used section 38 property to N under §1.48–3(a)(2).

Example (2). Q Corp. (as lessor) and P Corp. (as lessee) enter into a lease that is characterized as a lease under section 168(f)(8). The lease has a 6-year term. P has no option to

renew the lease or to purchase the property. At the end of 6 years, if P would be considered the owner of the property without regard to section 168(f)(8), upon the termination of the lease the property will be deemed to be sold by Q to P for the amount of the purchase money debt outstanding with respect to the property.

[T.D. 7791, 46 FR 51907, Oct. 23, 1981, as amended by T.D. 7795, 46 FR 56150, Nov. 13, 1981; T.D. 7800, 46 FR 63259, Dec. 31, 1981]

§5c.168(f)(8)–9 Pass-through leases—transfer of only the investment tax credit to a party other than the ultimate user of the property. [Reserved]

§5c.168(f)(8)–10 Leases between related parties. [Reserved]

§5c.168(f)(8)–11 Consolidated returns. [Reserved]

§5c.1305–1 Special income averaging rules for taxpayers otherwise required to compute tax in accordance with §5c.1256–3.

(a) *In general.* If an eligible individual (as defined in section 1303 and the regulations thereunder) is described in the first sentence of §5c.1256–3(a), chooses the benefits of income averaging and otherwise complies with the special rules under section 1304 and the regulations thereunder, and has averagable income (as defined in section 1302 and the regulations thereunder) in excess of \$3,000, then the individual shall compute the tax under section 1301 as provided in this section. The computation under this section shall be in lieu of the computation under §5c.1256–3.

(b) *Computation of tax.* The individual shall compute the tax under section 1301 as follows:

Step (1). Compute tax under section 1301 and the regulations thereunder on all taxable income, including gains or losses on regulated futures contracts subject to section 1256(a) and the regulations thereunder, using rates applicable to the taxpayer for the taxable year which includes June 23, 1981.

Step (2). Compute tax under section 1301 and the regulations thereunder on all taxable income, including gains or losses on regulated futures contracts subject to section 1256(a) and the regulations thereunder, using rates applicable to the taxpayer for taxable years beginning in 1982.

Step (3). Compute the percentage of adjusted gross income attributable to all sources except regulated futures contracts subject to section 1256(a) and the regulations thereunder.

Step (4). Compute the percentage of adjusted gross income attributable to regulated futures contracts subject to section 1256(a) and the regulations thereunder. Both the percentage in Step (3) and the percentage in Step (4) are to be rounded to the nearest percent. The sum of both percentages must equal 100 percent.

Step (5). Multiply the result of Step (1) with the result of Step (3).

Step (6). Multiply the result of Step (2) with the result of Step (4).

Step (7). Add the result of Step (5) and the result of Step (6). This is the tax for the individual under section 1301 for the taxable year which includes June 23, 1981.

(c) *Option to defer tax.* If an individual computes the tax under section 1301 as provided in paragraph (a) of this section, the individual may also opt to pay part or all of the deferrable tax under income averaging (as defined in paragraph (d) of this section) for the taxable year which includes June 23, 1981, in 2 or more, but not more than 5, equal installments in accordance with this section. Such individual may not opt to pay part or all of the deferrable tax in installments under § 5c.1256-3. An individual opting to defer payment must attach a statement to Form 6781 indicating the computation of deferrable tax under income averaging, the number of installments in which the individual opts to pay the deferrable tax under income averaging, and the amount of each such payment.

(d) *Deferrable tax under income averaging.* The deferrable tax under income averaging is the excess of—

(1) The tax for the taxable year which includes June 23, 1981, computed pursuant to paragraph (b) of this section, over

(2) The tax for the taxable year which includes June 23, 1981, computed pursuant to paragraph (b) of this section, except that pre-transitional year gain or loss (as described in § 5c.1256-2(g)) is omitted for purposes of recomputing the percentage in Step (4). As computed under this subparagraph (2), the sum of the percentage in Step (3) and Step (4) will not equal 100 percent.

(e) *Rules of application.* The provisions of § 5c.1256-3 (c), (f), (g), (h), (i),

and (j) shall apply in computing the tax and in determining the deferrable tax under income averaging under this section.

(f) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). Individual A is a single, calendar year taxpayer with no dependents. A reported the following amounts for the following years on line 34 of Form 1040:

1977—\$80,000
1978—\$90,000
1979—\$100,000
1980—\$110,000

A reports the following amounts for the following lines on Form 1040 for 1981:

line 7—\$120,000
line 12—\$600,000
line 32b—\$19,000
line 33—\$1,000

The amount on line 12 is computed as follows: \$937,500 of gain is attributable to regulated futures contracts subject to section 1256(a). Of that total, 40 percent is short term capital gain (\$375,000) and 60 percent is long term capital gain (\$562,500). Of the long term capital gain, 40 percent is taxable (\$225,000). Therefore, A reports \$600,000 on line 12 (\$375,000+\$225,000).

The result of Step (1) is \$464,013.41. The result of Step (2) is \$337,051.52. The result of Step (3) is 17 percent. The result of Step (4) is 83 percent. The result of Step (5) is \$78,882.28. The result of Step (6) is \$279,752.76. The result of Step (7) is \$358,635.04. This is A's tax for 1981 under section 1301.

Example (2). The facts are the same as in Example (1), except that \$703,125 of the \$937,500 gain attributable to regulated futures contracts is pre-transitional year gain or loss (as described in § 5c.1256-2(g)). A's tax for 1981 under section 1301 is \$358,635.04. A may opt to pay in installments a maximum of \$221,004.68 of the tax due in 1981. If A opts to defer the maximum amount and pay in 5 equal installments, A must pay for 1981 a tax of \$181,831.30. Each of the 4 succeeding installments is \$44,200.94 plus interest computed in accordance with § 5c.1256-3(g)(3).

(Secs. 1305 and 7805 of the Internal Revenue Code of 1954 (78 Stat. 110, 26 U.S.C. 1305; 68A Stat. 917, 26 U.S.C. 7805); secs. 508(c) and 509 of the Economic Recovery Tax Act of 1981 (95 Stat. 333-335))

[T.D. 7826, 47 FR 38692, Sept. 2, 1982]

**PART 5e—TEMPORARY INCOME
TAX REGULATIONS, TRAVEL EXPENSES OF MEMBERS OF CONGRESS**

AUTHORITY: Secs. 280A(f)(4)(B) and 7805 of the Internal Revenue Code of 1954 (95 Stat. 1641, 26 U.S.C. 7805; 68A Stat. 917, 26 U.S.C. 7805).

§ 5e.274-8 Travel expenses of Members of Congress.

(a) *In general.* Members of Congress (including any Delegate and Resident Commissioner) who are away from home within the meaning of section 162 (a), in the Washington, DC area, may elect in accordance with paragraph (f) of this section to deduct an amount described in paragraph (c) of this section as living expenses, without substantiation. A Member who elects under this section may not deduct any amount for the living expenses described in paragraph (b). A Member who does not make an election under this section must substantiate his expenses for living in Washington, DC in accordance with section 274 and § 1.274-5.

(b) *Living expenses covered.* The amount allowed to be deducted without substantiation, pursuant to this section, for costs incurred for living in the Washington, DC area represents amounts expended for meals, lodging, and other incidental expenses. Meals include the actual cost of the food and expenses incident to the preparation and serving thereof. Lodging includes amounts paid for rent, care of premises, utilities, insurance and depreciation of household furnishings owned by the Member. In the case of a Member who lives in a residence owned by him in the Washington, DC area, the cost of lodging also includes depreciation on such residence. Other incidental expenses include laundry, cleaning, and local transportation. Local transportation includes travel within a 50 mile radius of Washington, DC, whether by private automobile, taxicab or other transportation for hire. Interest and

taxes on personal property will not be considered expenses to be included within this paragraph.

(c)(1) *Amounts allowed without substantiation.* The amount that may be deducted pursuant to section 162 and these regulations is an amount equal to the product of the number of Congressional days in the taxable year, multiplied by the designated amount. The designated amount is—

(i) In the case of a Member who deducts interest and taxes attributable to the ownership of a personal residence in the Washington, DC area, two-thirds of the maximum amount of actual subsistence for Washington, DC payable pursuant to 5 U.S.C. 5702(c), or

(ii) In the case of a Member not described in paragraph (c)(1)(i), the maximum amount of actual subsistence for Washington, DC payable pursuant to 5 U.S.C. 5702(c).

A Member who incurs interest and taxes on his residence in the Washington, DC area may forego the deduction of such amounts and use the designated amount prescribed by paragraph (c)(1)(ii).

(2) If a Member, who lives in a residence owned by him in the Washington, DC area, chooses to deduct amounts prescribed in paragraph (c)(1) of this section, the Member must treat as an adjustment to the basis of such residence an amount equal to 20 percent of the maximum amount of actual subsistence multiplied by the number of Congressional days. Such adjustments will be considered a proper adjustment for exhaustion, wear, and tear under this subtitle.

(d) *Congressional days.* The number of Congressional days with respect to a Member is the number of days in the taxable year less the number of days in periods in which the Member's Congressional chamber was not in session for 5 consecutive days or more (including Saturday and Sunday). The number of days with respect to a Member is determined without regard to whether or not the Member was in the Washington, DC area on such days.