

§ 1.248-1 Election to amortize organizational expenditures.

(a) *In general.* Under section 248(a), a corporation may elect to amortize organizational expenditures as defined in section 248(b) and § 1.248-1(b). In the taxable year in which a corporation begins business, an electing corporation may deduct an amount equal to the lesser of the amount of the organizational expenditures of the corporation, or \$5,000 (reduced (but not below zero) by the amount by which the organizational expenditures exceed \$50,000). The remainder of the organizational expenditures is deducted ratably over the 180-month period beginning with the month in which the corporation begins business. All organizational expenditures of the corporation are considered in determining whether the organizational expenditures exceed \$50,000, including expenditures incurred on or before October 22, 2004.

(b) *Organizational expenditures defined.* (1) Section 248(b) defines the term *organizational expenditures*. Such expenditures, for purposes of section 248 and this section, are those expenditures which are directly incident to the creation of the corporation. An expenditure, in order to qualify as an organizational expenditure, must be (i) incident to the creation of the corporation, (ii) chargeable to the capital account of the corporation, and (iii) of a character which, if expended incident to the creation of a corporation having a limited life, would be amortizable over such life. An expenditure which fails to meet each of these three tests may not be considered an organizational expenditure for purposes of section 248 and this section.

(2) The following are examples of organizational expenditures within the meaning of section 248 and this section: legal services incident to the organization of the corporation, such as drafting the corporate charter, by-laws, minutes of organizational meetings, terms of original stock certificates, and the like; necessary accounting services; expenses of temporary directors and of organizational meetings of directors or stockholders; and fees paid to the State of incorporation.

(3) The following expenditures are not organizational expenditures within

the meaning of section 248 and this section:

(i) Expenditures connected with issuing or selling shares of stock or other securities, such as commissions, professional fees, and printing costs. This is so even where the particular issue of stock to which the expenditures relate is for a fixed term of years;

(ii) Expenditures connected with the transfer of assets to a corporation.

(4) Expenditures connected with the reorganization of a corporation, unless directly incident to the creation of a corporation, are not organizational expenditures within the meaning of section 248 and this section.

(c) *Time and manner of making election.* A corporation is deemed to have made an election under section 248(a) to amortize organizational expenditures as defined in section 248(b) and § 1.248-1(b) for the taxable year in which the corporation begins business. A corporation may choose to forgo the deemed election by affirmatively electing to capitalize its organizational expenditures on a timely filed Federal income tax return (including extensions) for the taxable year in which the corporation begins business. The election either to amortize organizational expenditures under section 248(a) or to capitalize organizational expenditures is irrevocable and applies to all organizational expenditures of the corporation. A change in the characterization of an item as an organizational expenditure is a change in method of accounting to which sections 446 and 481(a) apply if the corporation treated the item consistently for two or more taxable years. A change in the determination of the taxable year in which the corporation begins business also is treated as a change in method of accounting if the corporation amortized organizational expenditures for two or more taxable years.

(d) *Determination of when corporation begins business.* The deduction allowed under section 248 must be spread over a period beginning with the month in which the corporation begins business. The determination of the date the corporation begins business presents a question of fact which must be determined in each case in light of all the circumstances of the particular case.

The words “begins business,” however, do not have the same meaning as “in existence.” Ordinarily, a corporation begins business when it starts the business operations for which it was organized; a corporation comes into existence on the date of its incorporation. Mere organizational activities, such as the obtaining of the corporate charter, are not alone sufficient to show the beginning of business. If the activities of the corporation have advanced to the extent necessary to establish the nature of its business operations, however, it will be deemed to have begun business. For example, the acquisition of operating assets which are necessary to the type of business contemplated may constitute the beginning of business.

(e) *Examples.* The following examples illustrate the application of this section:

Example 1. Expenditures of \$5,000 or less. Corporation X, a calendar year taxpayer, incurs \$3,000 of organizational expenditures after October 22, 2004, and begins business on July 1, 2011. Under paragraph (c) of this section, Corporation X is deemed to have elected to amortize organizational expenditures under section 248(a) in 2011. Therefore, Corporation X may deduct the entire amount of the organizational expenditures in 2011, the taxable year in which Corporation X begins business.

Example 2. Expenditures of more than \$5,000 but less than or equal to \$50,000. The facts are the same as in *Example 1* except that Corporation X incurs organizational expenditures of \$41,000. Under paragraph (c) of this section, Corporation X is deemed to have elected to amortize organizational expenditures under section 248(a) in 2011. Therefore, Corporation X may deduct \$5,000 and the portion of the remaining \$36,000 that is allocable to July through December of 2011 ($\$36,000/180 \times 6 = \$1,200$) in 2011, the taxable year in which Corporation X begins business. Corporation X may amortize the remaining \$34,800 ($\$36,000 - \$1,200 = \$34,800$) ratably over the remaining 174 months.

Example 3. Subsequent change in the characterization of an item. The facts are the same as in *Example 2* except that Corporation X determines in 2013 that Corporation X incurred \$10,000 for an additional organizational expenditure erroneously deducted in 2011 under section 162 as a business expense. Under paragraph (c) of this section, Corporation X is deemed to have elected to amortize organizational expenditures under section 248(a) in 2011, including the additional \$10,000 of organizational expenditures. Corporation X is using an impermissible method of account-

ing for the additional \$10,000 of organizational expenditures and must change its method under § 1.446-1(e) and the applicable general administrative procedures in effect in 2013.

Example 4. Subsequent redetermination of year in which business begins. The facts are the same as in *Example 2* except that, in 2012, Corporation X deducted the organizational expenditures allocable to January through December of 2012 ($\$36,000/180 \times 12 = \$2,400$). In addition, in 2013 it is determined that Corporation X actually began business in 2012. Under paragraph (c) of this section, Corporation X is deemed to have elected to amortize organizational expenditures under section 248(a) in 2012. Corporation X impermissibly deducted organizational expenditures in 2011, and incorrectly determined the amount of organizational expenditures deducted in 2012. Therefore, Corporation X is using an impermissible method of accounting for the organizational expenditures and must change its method under § 1.446-1(e) and the applicable general administrative procedures in effect in 2013.

Example 5. Expenditures of more than \$50,000 but less than or equal to \$55,000. The facts are the same as in *Example 1* except that Corporation X incurs organizational expenditures of \$54,500. Under paragraph (c) of this section, Corporation X is deemed to have elected to amortize organizational expenditures under section 248(a) in 2011. Therefore, Corporation X may deduct \$500 ($\$5,000 - \$4,500$) and the portion of the remaining \$54,000 that is allocable to July through December of 2011 ($\$54,000/180 \times 6 = \$1,800$) in 2011, the taxable year in which Corporation X begins business. Corporation X may amortize the remaining \$52,200 ($\$54,000 - \$1,800 = \$52,200$) ratably over the remaining 174 months.

Example 6. Expenditures of more than \$55,000. The facts are the same as in *Example 1* except that Corporation X incurs organizational expenditures of \$450,000. Under paragraph (c) of this section, Corporation X is deemed to have elected to amortize organizational expenditures under section 248(a) in 2011. Therefore, Corporation X may deduct the amounts allocable to July through December of 2011 ($\$450,000/180 \times 6 = \$15,000$) in 2011, the taxable year in which Corporation X begins business. Corporation X may amortize the remaining \$435,000 ($\$450,000 - \$15,000 = \$435,000$) ratably over the remaining 174 months.

(f) *Effective/applicability date.* This section applies to organizational expenditures paid or incurred after August 16, 2011. However, taxpayers may apply all the provisions of this section to organizational expenditures paid or

incurred after October 22, 2004, provided that the period of limitations on assessment of tax for the year the election under paragraph (c) of this section is deemed made has not expired. For organizational expenditures paid or incurred on or before September 8, 2008, taxpayers may instead apply §1.248-1, as in effect prior to that date (§1.248-1 as contained in 26 CFR part 1 edition revised as of April 1, 2008).

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§ 1.249-1 Limitation on deduction of bond premium on repurchase.

(a) *Limitation*—(1) *General rule*. No deduction is allowed to the issuing corporation for any “repurchase premium” paid or incurred to repurchase a convertible obligation to the extent the repurchase premium exceeds a “normal call premium.”

(2) *Exception*. Under paragraph (e) of this section, the preceding sentence shall not apply to the extent the corporation demonstrates that such excess is attributable to the cost of borrowing and not to the conversion feature.

(b) *Obligations*—(1) *Definition*. For purposes of this section, the term *obligation* means any bond, debenture, note, or certificate or other evidence of indebtedness.

(2) *Convertible obligation*. Section 249 applies to an obligation which is convertible into the stock of the issuing corporation or a corporation which, at the time the obligation is issued or repurchased, is in control of or controlled by the issuing corporation. For purposes of this subparagraph, the term *control* has the meaning assigned to such term by section 368(c).

(3) *Comparable nonconvertible obligation*. A nonconvertible obligation is comparable to a convertible obligation if both obligations are of the same grade and classification, with the same issue and maturity dates, and bearing the same rate of interest. The term *comparable nonconvertible obligation* does not include any obligation which is convertible into property.

(c) *Repurchase premium*. For purposes of this section, the term *repurchase premium* means the excess of the repurchase price paid or incurred to repurchase the obligation over its adjusted

issue price (within the meaning of §1.1275-1(b)) as of the repurchase date. For the general rules applicable to the deductibility of repurchase premium, see §1.163-7(c). This paragraph (c) applies to convertible obligations repurchased on or after March 2, 1998.

(d) *Normal call premium*—(1) *In general*. Except as provided in subparagraph (2) of this paragraph, for purposes of this section, a *normal call premium* on a convertible obligation is an amount equal to a normal call premium on a nonconvertible obligation which is comparable to the convertible obligation. A normal call premium on a comparable nonconvertible obligation is a call premium specified in dollars under the terms of such obligation. Thus, if such a specified call premium is constant over the entire term of the obligation, the normal call premium is the amount specified. If, however, the specified call premium varies during the period the comparable nonconvertible obligation is callable or if such obligation is not callable over its entire term, the normal call premium is the amount specified for the period during the term of such comparable nonconvertible obligation which corresponds to the period during which the convertible obligation was repurchased.

(2) *One-year's interest rule*. For a convertible obligation repurchased on or after March 2, 1998, a call premium specified in dollars under the terms of the obligation is considered to be a normal call premium on a nonconvertible obligation if the call premium applicable when the obligation is repurchased does not exceed an amount equal to the interest (including original issue discount) that otherwise would be deductible for the taxable year of repurchase (determined as if the obligation were not repurchased). The provisions of this subparagraph shall not apply if the amount of interest payable for the corporation's taxable year is subject under the terms of the obligation to any contingency other than repurchase prior to the close of such taxable year.

(e) *Exception*—(1) *In general*. If a repurchase premium exceeds a normal call premium, the general rule of paragraph (a) (1) of this section does not