

erroneously deducted in 2011 under section 162 as a business expense. Under paragraph (b) of this section, Corporation X is deemed to have elected to amortize start-up expenditures under section 195(b) in 2011, including the additional \$10,000 of start-up expenditures. Corporation X is using an impermissible method of accounting for the additional \$10,000 of start-up 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 start-up 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 (b) of this section, Corporation X is deemed to have elected to amortize start-up expenditures under section 195(b) in 2012. Corporation X impermissibly deducted start-up expenditures in 2011, and incorrectly determined the amount of start-up expenditures deducted in 2012. Therefore, Corporation X is using an impermissible method of accounting for the start-up 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 start-up expenditures of \$54,500. Under paragraph (b) of this section, Corporation X is deemed to have elected to amortize start-up expenditures under section 195(b) 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 the active trade or business begins. 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 start-up expenditures of \$450,000. Under paragraph (b) of this section, Corporation X is deemed to have elected to amortize start-up expenditures under section 195(b) 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 the active trade or business begins. Corporation X may amortize the remaining \$435,000 ($\$450,000 - \$15,000 = \$435,000$) ratably over the remaining 174 months.

(d) *Effective/applicability date.* This section applies to start-up expenditures paid or incurred after August 16, 2011. However, taxpayers may apply all the

provisions of this section to start-up 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 (b) of this section is deemed made has not expired. For start-up expenditures paid or incurred on or before September 8, 2008, taxpayers may instead apply § 1.195-1, as in effect prior to that date (§ 1.195-1 as contained in 26 CFR part 1 edition revised as of April 1, 2008).

[T.D. 9542, 76 FR 50888, Aug. 17, 2011]

§ 1.197-0 Table of contents.

This section lists the headings that appear in § 1.197-2.

§ 1.197-2 Amortization of goodwill and certain other intangibles.

- (a) Overview.
 - (1) In general.
 - (2) Section 167(f) property.
 - (3) Amounts otherwise deductible.
 - (b) Section 197 intangibles; in general.
 - (1) Goodwill.
 - (2) Going concern value.
 - (3) Workforce in place.
 - (4) Information base.
 - (5) Know-how, etc.
 - (6) Customer-based intangibles.
 - (7) Supplier-based intangibles.
 - (8) Licenses, permits, and other rights granted by governmental units.
 - (9) Covenants not to compete and other similar arrangements.
 - (10) Franchises, trademarks, and trade names.
 - (11) Contracts for the use of, and term interests in, other section 197 intangibles.
 - (12) Other similar items.
 - (c) Section 197 intangibles; exceptions.
 - (1) Interests in a corporation, partnership, trust, or estate.
 - (2) Interests under certain financial contracts.
 - (3) Interests in land.
 - (4) Certain computer software.
 - (i) Publicly available.
 - (ii) Not acquired as part of trade or business.
 - (iii) Other exceptions.
 - (iv) Computer software defined.
 - (5) Certain interests in films, sound recordings, video tapes, books, or other similar property.
 - (6) Certain rights to receive tangible property or services.
 - (7) Certain interests in patents or copyrights.
 - (8) Interests under leases of tangible property.

Internal Revenue Service, Treasury

§ 1.197-1T

(2) Treatment of indemnity reinsurance transactions.

(B) Loss.

(C) Examples.

(iv) Effective dates.

(A) In general.

(B) Application to pre-effective date acquisitions and dispositions.

(C) Change in method of accounting.

(7) In general.

(2) Acquisitions and dispositions on or after effective date.

(3) Acquisitions and dispositions before the effective date.

(6) Amounts paid or incurred for a franchise, trademark, or trade name.

(7) Amounts properly taken into account in determining the cost of property that is not a section 197 intangible.

(8) Treatment of amortizable section 197 intangibles as depreciable property.

(h) Anti-churning rules.

(1) Scope and purpose.

(i) Scope.

(ii) Purpose.

(2) Treatment of section 197(f)(9) intangibles.

(3) Amounts deductible under section 1253(d) or § 1.162-11.

(4) Transition period.

(5) Exceptions.

(6) Related person.

(i) In general.

(ii) Time for testing relationships.

(iii) Certain relationships disregarded.

(iv) De minimis rule.

(A) In general.

(B) Determination of beneficial ownership interest.

(7) Special rules for entities that owned or used property at any time during the transition period and that are no longer in existence.

(8) Special rules for section 338 deemed acquisitions.

(9) Gain-recognition exception.

(i) Applicability.

(ii) Effect of exception.

(iii) Time and manner of election.

(iv) Special rules for certain entities.

(v) Effect of nonconforming elections.

(vi) Notification requirements.

(vii) Revocation.

(viii) Election Statement.

(ix) Determination of highest marginal rate of tax and amount of other Federal income tax on gain.

(A) Marginal rate.

(7) Noncorporate taxpayers.

(2) Corporations and tax-exempt entities.

(B) Other Federal income tax on gain.

(x) Coordination with other provisions.

(A) In general.

(B) Section 1374.

(C) Procedural and administrative provisions.

(D) Installment method.

(xi) Special rules for persons not otherwise subject to Federal income tax.

(10) Transactions subject to both anti-churning and nonrecognition rules.

(11) Avoidance purpose.

(12) Additional partnership anti-churning rules

(i) In general.

(ii) Section 732(b) adjustments. [Reserved]

(iii) Section 732(d) adjustments.

(iv) Section 734(b) adjustments. [Reserved]

(v) Section 743(b) adjustments.

(vi) Partner is or becomes a user of partnership intangible.

(A) General rule.

(B) Anti-churning partner.

(C) Effect of retroactive elections.

(vii) Section 704(c) elections.

(A) Allocations where the intangible is amortizable by the contributor.

(B) Allocations where the intangible is not amortizable by the contributor.

(viii) Operating rule for transfers upon death.

(i) Reserved

(j) General anti-abuse rule.

(k) Examples.

(1) Effective dates.

(1) In general.

(2) Application to pre-effective date acquisitions.

(3) Application of regulation project REG-209709-94 to pre-effective date acquisitions.

(4) Change in method of accounting.

(i) In general.

(ii) Application to pre-effective date transactions.

(iii) Automatic change procedures.

[T.D. 8867, 65 FR 3826, Jan. 25, 2000, as amended by T.D. 9257, 71 FR 17996, Apr. 10, 2006; T.D. 9377, 73 FR 3869, Jan. 23, 2008]

§ 1.197-1T Certain elections for intangible property (temporary).

(a) *In general.* This section provides rules for making the two elections under section 13261 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). Paragraph (c) of this section provides rules for making the section 13261(g)(2) election (the retroactive election) to apply the intangibles provisions of OBRA '93 to property acquired after July 25, 1991, and on or before August 10, 1993 (the date of enactment of OBRA '93). Paragraph (d) of this section provides rules for making the section 13261(g)(3) election (binding contract election) to apply prior law to property acquired pursuant to a written binding contract in effect on August 10, 1993, and at all times thereafter before the date of acquisition. The provisions of this section apply