

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8797]

RIN 1545-AT71

Election to Amortize Start-Up Expenditures for Active Trades or Businesses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning start-up expenditures for active trades or businesses under section 195. These regulations are necessary to provide rules and procedures for electing to amortize start-up expenditures under section 195. They affect all taxpayers wishing to amortize start-up expenditures under section 195.

DATES: Effective Date: These regulations are effective December 17, 1998.

Applicability Date: For the date of applicability of these regulations, see §1.195-1(d).

FOR FURTHER INFORMATION CONTACT: David Selig, (202) 622-3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of

Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1582.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent varies from .10 hours to .50 hours, depending on individual circumstances, with an estimated average of .25 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 195 was added to the Internal Revenue Code of 1954 by section 102 of the Miscellaneous Revenue Act of 1980, and was amended by section 94 of the Tax Reform Act of 1984.

Section 195 generally provides that no deduction is allowed for start-up expenditures unless the taxpayer elects to amortize the expenditures. Under section 195(b)(1), if the taxpayer elects to amortize start-up expenditures, the expenditures are amortizable over a period of not less than 60 months beginning with the month in which the active trade or business begins. Section 195(d) provides that an election to amortize start-up expenditures must be made not later than the time prescribed by law for filing the return for the taxable year in which the active trade or business begins (including extensions thereof).

On January 13, 1998, the IRS published a notice of proposed rulemaking [REG-209373-81] in the **Federal Register** (63 FR 1933) proposing amendments to the Income Tax Regulations (26 CFR part 1) concerning the election to amortize start-up expenditures under section 195 of the Internal Revenue Code. A public hearing was scheduled for June 2, 1998, pursuant to a notice of public hearing published simultaneously with the notice of proposed rulemaking. No one requested to speak at the public hearing, therefore, no public hearing was held. Written comments responding to the notice were received. After consideration of all of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Discussion of Comments

The proposed regulations provide that an election to amortize start-up expenditures is made by attaching a statement

to the taxpayer's income tax return. The income tax return and statement must be filed not later than the date prescribed by law for filing the income tax return (including any extensions of time) for the taxable year in which the active trade or business begins. Thus, a taxpayer may file an election for any taxable year prior to the year in which the taxpayer's active trade or business begins, and such election will become effective in the month of the year in which the taxpayer's active trade or business begins.

One commentator suggested that the provision in the proposed regulations permitting the filing of a revised statement to include any start-up expenditures not included in the taxpayer's original election statement appears to endorse the practice of those taxpayers who file elections listing token or zero start-up expenditures on the election statement and subsequently attempt to increase the amount subject to amortization by expenditures that taxpayers have been unsuccessful in maintaining as expansion costs. The provision is not designed to permit a taxpayer to revise the election statement to include start-up expenditures omitted by reason of the taxpayer's claim on the taxpayer's return that the expenditures are expansion costs. Accordingly, the regulations have been clarified to provide that the election statement may not be revised to include expenditures that a taxpayer has treated on the taxpayer's tax return in a manner inconsistent with their treatment as start-up expenditures.

Another commentator suggested that a separate statement to make the election under section 195 should not be required for small businesses, but rather a check-the-box election should be provided. A separate statement is necessary to ensure that the expenses listed therein are properly characterized as start-up expenditures, and that amortization of the start-up expenditures will begin and end at the proper times. The statement is simple to complete and the time to prepare the statement is minimal. Accordingly, the final regulations retain the requirement that a separate statement with the requisite information be attached to the taxpayer's return.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant impact on a substantial number of small entities. This certification is based upon the fact that the time required to prepare and file the election statement is minimal and will not have a significant impact on those small entities that choose to make the election. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is David Selig, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.195-1 is added to read as follows:

§1.195-1 Election to amortize start-up expenditures.

(a) In general. Under section 195(b), a taxpayer may elect to amortize start-up expenditures (as defined in section 195(c)(1)). A taxpayer who elects to amortize start-up expenditures must, at the time of the election, select an amortization period of not less than 60 months, beginning with the month in which the active trade or business begins. The election applies to all of the taxpayer's start-up expenditures with respect to the trade or business. The election to amortize

start-up expenditures is irrevocable, and the amortization period selected by the taxpayer in making the election may not subsequently be changed.

(b) Time and manner of making election. The election to amortize start-up expenditures under section 195 shall be made by attaching a statement containing the information described in paragraph (c) of this section to the taxpayer's return. The statement must be filed no later than the date prescribed by law for filing the return (including any extensions of time) for the taxable year in which the active trade or business begins. The statement may be filed with a return for any taxable year prior to the year in which the taxpayer's active trade or business begins, but no later than the date prescribed in the preceding sentence. Accordingly, an election under section 195 filed for any taxable year prior to the year in which the taxpayer's active trade or business begins (and pursuant to which the taxpayer commenced amortizing start-up expenditures in that prior year) will become effective in the month of the year in which the taxpayer's active trade or business begins.

(c) Information required. The statement shall set forth a description of the trade or business to which it relates with sufficient detail so that expenses relating to the trade or

business can be identified properly for the taxable year in which the statement is filed and for all future taxable years to which it relates. The statement also shall include the number of months (not less than 60) over which the expenditures are to be amortized, and to the extent known at the time the statement is filed, a description of each start-up expenditure incurred (whether or not paid) and the month in which the active trade or business began (or was acquired). A revised statement may be filed to include any start-up expenditures not included in the taxpayer's original election statement, but the revised statement may not include any expenditures for which the taxpayer had previously taken a position on a return inconsistent with their treatment as start-up expenditures. The revised statement may be filed with a return filed after the return that contained the election.

(d) Effective date. This section applies to elections filed on or after December 17, 1998.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In §602.101, paragraph (c) is amended by adding an entry to the table in numerical order to read as follows:

§602.101 OMB Control numbers.

(c) * * *

CFR part or section where identified and described	Current OMB control No.
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1.195-1.....	1545-1582
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Bob Wenzel
Deputy Commissioner of Internal Revenue

Approved:

Donald C. Lubick
Assistant Secretary of the Treasury