553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable for those changes to Export Control Classification Number (ECCN) 1C352.a.2 on the Commerce Control List (Supplement No. 1 to part 774) and to Supplement No. 2 to part 745, because those revisions involve a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable for those changes to sections 745.1(a)(2) and (b)(3) and 745.2(a)(2), because those revisions relate to rules of agency organization, procedure, or practice. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects

15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 745 and 774 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

PART 745—[AMENDED]

■ 1. The authority citation for 15 CFR part 745 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 2. Section 745.1 is amended by revising paragraphs (a)(2) and (b)(3) to read as follows:

§ 745.1 Advance notification and annual report of all exports of Schedule 1 chemicals to other States Parties.

* * * * *

(a) * * *

(2) Send the notification either by fax to (202) 482–1731 or by mail or courier delivery to the following address: Information Technology Team, Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 4515, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Attn: ''Advance Notification of Schedule 1 Chemical Export''.

* * * * *

(b) * * *

(3) Send the report either by fax to (202) 482–1731 or by mail or courier delivery to the following address: Information Technology Team, Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 4515, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Attn: ''Annual Report of Schedule 1 Chemical Export''.

■ 3. Section 745.2(a)(2) is revised to read as follows:

§ 745.2 End-Use Certificate reporting requirements under the Chemical Weapons Convention.

* * * * *

(a) * * *

(2) Submit a copy of the End-Use Certificate, no later than 7 days after the date of export, either by fax to (202) 482–1731 or by mail or courier delivery to the following address: Information Technology Team, Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 4515, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Attn: ''CWC End-Use Certificate Report''.

* * * * *

Supplement No. 2 to Part 745—[Amended]

■ 4. Supplement No. 2 to Part 745 is amended:

■ a. By revising the undesignated center heading ''List of States Parties as of August 1, 2007'' to read ''List of States Parties as of July 1, 2008''; and

■ b. By adding, in alphabetical order, the countries ''Congo (Republic of the)'' and ''Guinea-Bissau''.

PART 774—[AMENDED]

■ 5. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

Supplement No. 1 to Part 774—[Amended]

■ 6. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins,'' ECCN 1C352 is amended by revising paragraph (a)(2) under *''Items''* in the List of Items Controlled to read as follows:

1C352 Animal pathogens, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. * * *

a.2. Avian influenza (AI) viruses identified as having high pathogenicity (HP), as follows:

a.2.a. AI viruses that have an intravenous pathogenicity index (IVPI) in 6-week-old chickens greater than 1.2; or

a.2.b. AI viruses that cause at least 75% mortality in 4- to 8-week-old chickens infected intravenously.

Note: Avian influenza (AI) viruses of the H5 or H7 subtype that do not have either of the characteristics described in 1C352.a.2 (specifically, 1C352.a.2.a or a.2.b) should be sequenced to determine whether multiple basic amino acids are present at the cleavage site of the haemagglutinin molecule (HA0). If the amino acid motif is similar to that observed for other HPAI isolates, then the isolate being tested should be considered as HPAI and the virus is controlled under 1C352.a.2.

* * * * *

Dated: July 1, 2008.

Eileen M. Albanese,

Acting Assistant Secretary for Export Administration.

[FR Doc. E8–15386 Filed 7–7–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9411]

RIN 1545–BE78

Elections Regarding Start-up Expenditures, Corporation Organizational Expenditures, and Partnership Organizational Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to elections to deduct start-up expenditures under section 195 of the Internal Revenue Code (Code), organizational expenditures of corporations under section 248, and organizational expenses of partnerships under section 709. The American Jobs Creation Act of 2004 amended these three sections of the Code to provide similar rules for deducting these types of expenses that are paid or incurred after October 22, 2004. The regulations affect taxpayers that pay or incur these expenses and provide guidance on how to elect to deduct the expenses in accordance with the new rules. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on July 8, 2008.

Applicability Dates: For dates of applicability, see §§ 1.195–1T(d), 1.248–1T(f), and 1.709–1T(b)(5).

FOR FURTHER INFORMATION CONTACT: Grace Matuszeski, (202) 622–7900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR part 1) under sections 195, 248, and 709 of the Code to reflect amendments made by section 902 of the American Jobs Creation Act of 2004 (Pub. L. 108–357, 118 Stat. 1418) (the Act). The amendments made by section 902 of the Act are effective for amounts paid or incurred after October 22, 2004, the date of the enactment of the Act.

As amended by section 902(a) of the Act, section 195(b) allows an electing taxpayer to deduct, in the taxable year in which the taxpayer begins an active trade or business, an amount equal to the lesser of (1) the amount of the start-up expenditures that relate to the active trade or business, or (2) $5,000, reduced (but not below zero) by the amount by which the start-up expenditures exceed $50,000. The remainder of the start-up expenditures is deductible ratably over the 180-month period beginning with the month in which the active trade or business begins.

As amended by section 902(b) of the Act, section 248(a) allows an electing corporation to deduct, in the taxable year in which the corporation begins business, an amount equal to the lesser of (1) the amount of the organizational expenditures of the corporation, or (2) $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 deductible ratably over the 180-month period beginning with the month in which the corporation begins business.

As amended by section 902(c) of the Act, section 709(b) allows an electing partnership to deduct, in the taxable year in which the partnership begins business, an amount equal to the lesser of (1) the amount of the organizational expenses of the partnership, or (2) $5,000, reduced (but not below zero) by the amount by which the organizational expenses exceed $50,000. The remainder of the organizational expenses is deductible ratably over the 180-month period beginning with the month in which the partnership begins business.

Explanation of Provisions

This Treasury decision revises the regulations under sections 195, 248, and 709 to reflect the amendments made by section 902 of the Act. This Treasury decision also updates the manner in which taxpayers elect to deduct costs under sections 195, 248, and 709. Under these regulations, taxpayers are no longer required to file a separate election statement to deduct costs under sections 195, 248, and 709. The manner of filing these elections is changed because of various electronic return filing initiatives and in acknowledgment that the vast majority of taxpayers that incur costs that may be deducted under sections 195, 248, and 709 elect to deduct those costs. The change also reduces the administrative burden of making the elections.

The temporary regulations under sections 195, 248, and 709 apply to expenditures paid or incurred after September 8, 2008. However, taxpayers may apply all the provisions of these regulations to expenditures paid or incurred under sections 195, 248, and 709 after October 22, 2004, provided the period of limitations on assessment of tax has not expired for the year the election under section 195, 248, or 709 is deemed made. Expenditures paid or incurred on or before October 22, 2004, may be amortized over a period of not less than 60 months as provided for under prior law.

Temporary Regulations Under Section 195

Section 195(a) provides that, except as otherwise provided in section 195, no deduction shall be allowed for start-up expenditures. Under section 195(b)(1), a taxpayer may elect to deduct start-up expenditures as provided in sections 195(b)(1)(A) and (B). Section 195(b)(1)(A) allows an electing taxpayer to deduct start-up expenditures in the year in which the active trade or business to which the expenditures relate begins. The amount that may be deducted under section 195(b)(1)(A) in that year is the lesser of the amount of the start-up expenditures or $5,000, reduced (but not below zero) by the amount by which the start-up expenditures exceed $50,000. Any start-up expenditures that are not deductible under section 195(b)(1)(A) may be deducted by the taxpayer under section 195(b)(1)(B) ratably over the 180-month period beginning with the month in which the active trade or business begins. All start-up expenditures incurred by the taxpayer that relate to the active trade or business are considered in determining whether the start-up expenditures exceed $50,000, including expenditures incurred on or before October 22, 2004.

For start-up expenditures as defined in section 195(c)(1) paid or incurred after September 8, 2008, the temporary regulations under section 195 provide that a taxpayer is deemed to make an election under section 195(b) to deduct start-up expenditures for the taxable year in which the active trade or business to which the expenditures relate begins. Therefore, under the temporary regulations a taxpayer is no longer required to attach a statement to the return or specifically identify the deducted amount as start-up expenditures for the election under section 195(b) to be effective. A taxpayer may choose to forgo the deemed election by clearly electing to capitalize its start-up expenditures on a timely filed Federal income tax return (including extensions) for the taxable year in which the active trade or business begins. The election to capitalize start-up expenditures is made in accordance with the form and instructions used by the taxpayer to file its Federal income tax return. An election either to deduct start-up expenditures under section 195(b) or to capitalize start-up expenditures is irrevocable and applies to all start-up expenditures of the taxpayer that are related to the active trade or business.

In general, a change in the characterization of an item as a start-up expenditure, or a change in the determination of the taxable year in which the active trade or business begins, will be treated as a change in method of accounting with a section 481(a) adjustment.

Temporary Regulations Under Section 248

In general, the organizational expenditures of a corporation are not deductible except as provided in section 248. Under section 248(a), a corporation may elect to deduct organizational expenditures as provided in sections 248(a)(1)(A) and (B). Section 248(a)(1)(A) allows an electing corporation to deduct organizational expenditures in the year in which the corporation begins business. The amount that may be deducted under section 248(a)(1)(A) in that year is 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. Any organizational expenditures that are not deductible under section 248(a)(1)(A) may be deducted by the corporation under section 248(a)(1)(B) ratably over the 180-month period beginning with the month in which the corporation begins business. All organizational expenditures incurred by the corporation are considered in determining whether the organizational expenditures exceed $50,000, including expenditures incurred on or before October 22, 2004.

For organizational expenditures as defined in section 248(b) and § 1.248–1(b) paid or incurred after September 8, 2008, the temporary regulations under section 248 provide that a corporation is deemed to make an election under section 248(a) to deduct organizational expenditures for the taxable year in which the corporation begins business. Therefore, under the temporary regulations a corporation is no longer required to attach a statement to the return or specifically identify the deducted amount as organizational expenditures for the election under section 248(a) to be effective. A corporation may choose to forgo the deemed election by clearly 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 to capitalize organizational expenditures is made in accordance with the form and instructions used by the corporation to file its Federal income tax return. An election either to deduct organizational expenditures under section 248(a) or to capitalize organizational expenditures is irrevocable and applies to all organizational expenditures of the corporation.

In general, a change in the characterization of an item as an organizational expenditure, or a change in the determination of the taxable year in which the corporation begins business, will be treated as a change in method of accounting with a section 481(a) adjustment.

Temporary Regulations Under Section 709

Section 709(a) provides that, except as otherwise provided in section 709(b), no deduction shall be allowed for organizational expenses. Under section 709(b), a partnership may elect to deduct organizational expenses as provided in section 709(b)(1)(A) and (B). Section 709(b)(1)(A) allows an electing partnership to deduct organizational expenses in the year in which the partnership begins business. The amount that may be deducted under section 709(b)(1)(A) in that year is the lesser of the amount of the organizational expenses of the partnership or $5,000, reduced (but not below zero) by the amount by which the organizational expenses exceed $50,000. Any organizational expenses that are not deductible under section 709(b)(1)(A) may be deducted by the partnership under section 709(b)(1)(B) ratably over the 180-month period beginning with the month in which the partnership begins business. All organizational expenses incurred by the partnership are considered in determining whether the organizational expenses exceed $50,000, including expenses incurred on or before October 22, 2004.

For organizational expenses as defined in section 709(b)(3) and § 1.709–2(a) paid or incurred after September 8, 2008, the temporary regulations under section 709 provide that a partnership is deemed to make an election under section 709(b) to deduct organizational expenses for the taxable year in which the partnership begins business. Therefore, under the temporary regulations a partnership is no longer required to attach a statement to the return or specifically identify the deducted amount as organizational expenses for the election under section 709(b) to be effective. A partnership may choose to forgo the deemed election by clearly electing to capitalize its organizational expenses on a timely filed Federal income tax return (including extensions) for the taxable year in which the partnership begins business. The election to capitalize organizational expenses is made in accordance with the form and instructions used by the partnership to file its Federal income tax return. An election either to deduct organizational expenses under section 709(b) or to capitalize organizational expenses is irrevocable and applies to all organizational expenses of the partnership.

In general, a change in the characterization of an item as an organizational expense, or a change in the determination of the taxable year in which the partnership begins business, will be treated as a change in method of accounting with a section 481(a) adjustment.

Examples

The temporary regulations under sections 195, 248, and 709 contain examples that illustrate how the election is made, how to calculate the amount of the deduction that is allowed in the year in which the election is made, and how to effect subsequent redeterminations in the characterization of an item or the year in which the trade or business begins.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** for applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Code, these final and temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Grace Matuszeski of the Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is 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 revised to read as follows:

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

[Reserved]. For further guidance, see § 1.195–1T.

■ **Par. 3.** Section 1.195–1T is added to read as follows:

§ 1.195–1T Election to amortize start-up expenditures (temporary).

(a) *In general.* Under section 195(b), a taxpayer may elect to amortize start-up expenditures as defined in section 195(c)(1). In the taxable year in which a taxpayer begins an active trade or business, an electing taxpayer may deduct an amount equal to the lesser of the amount of the start-up expenditures that relate to the active trade or business, or $5,000 (reduced (but not below zero) by the amount by which the start-up expenditures exceed $50,000). The remainder of the start-up expenditures is deductible ratably over the 180-month period beginning with the month in which the active trade or business begins. All start-up expenditures that relate to the active trade or business are considered in determining whether the start-up expenditures exceed $50,000, including expenditures incurred on or before October 22, 2004.

(b) *Time and manner of making election.* A taxpayer is deemed to have made an election under section 195(b) to amortize start-up expenditures as defined in section 195(c)(1) for the taxable year in which the active trade or business to which the expenditures relate begins. A taxpayer may choose to forgo the deemed election by clearly electing to capitalize its start-up expenditures on a timely filed Federal income tax return (including extensions) for the taxable year in which the active trade or business to which the expenditures relate begins. The election either to amortize start-up expenditures under section 195(b) or to capitalize start-up expenditures is irrevocable and applies to all start-up expenditures that are related to the active trade or business. A change in the characterization of an item as a start-up expenditure is a change in method of accounting to which sections 446 and 481(a) apply if the taxpayer treated the item consistently for two or more taxable years. A change in the determination of the taxable year in which the active trade or business begins also is treated as a change in method of accounting if the taxpayer amortized start-up expenditures for two or more taxable years.

(c) *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 start-up expenditures after October 22, 2004, that relate to an active trade or business that begins on July 1, 2009. Under paragraph (b) of this section, Corporation X is deemed to have elected to deduct start-up expenditures under section 195(b) in 2009. Therefore, Corporation X may deduct the entire amount of the start-up expenditures in 2009, the taxable year in which the active trade or business begins.

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 start-up expenditures of $41,000. Under paragraph (b) of this section, Corporation X is deemed to have elected to deduct start-up expenditures under section 195(b) in 2009. Therefore, Corporation X may deduct $5,000 and the portion of the remaining $36,000 that is allocable to July through December of 2009 ($36,000/180 × 6 = $1,200) in 2009, the taxable year in which the active trade or business begins.

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 2011 that Corporation X incurred $10,000 for an additional start-up expenditure erroneously deducted in 2009 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 2009, 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 2011.

Example 4. Subsequent redetermination of year in which business begins. The facts are the same as in *Example 2* except that, in 2010, Corporation X deducted the start-up expenditures allocable to January through December of 2010 ($36,000/180 × 12 = $2,400). In addition, in 2011 it is determined that Corporation X actually began business in 2010. Under paragraph (b) of this section, Corporation X is deemed to have elected to deduct start-up expenditures under section 195(b) in 2010. Corporation X impermissibly deducted start-up expenditures in 2009, and incorrectly determined the amount of start-up expenditures deducted in 2010. 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 2011.

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 deduct start-up expenditures under section 195(b) in 2009. 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 2009 ($54,000/180 × 6 = $1,800) in 2009, the taxable year in which the active trade or business begins.

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 deduct start-up expenditures under section 195(b) in 2009. Therefore, Corporation X may deduct the amounts allocable to July through December of 2009 ($450,000/180 × 6 = $15,000) in 2009, the taxable year in which the active trade or business begins.

(d) *Effective/applicability date.* This section applies to start-up expenditures paid or incurred after September 8, 2008. 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. Otherwise, for start-up expenditures paid or incurred prior to September 8, 2008, see § 1.195–1 in effect prior to that date (§ 1.195–1 as contained in 26 CFR part 1 edition revised as of April 1, 2008).

(e) *Expiration date.* This section expires on July 7, 2011.

■ **Par. 4.** Section 1.248–1 is amended by revising paragraphs (a) and (c), and adding paragraphs (d), (e), (f), and (g) to read as follows:

§ 1.248–1 Election to amortize organizational expenditures.

(a) [Reserved]. For further guidance, see § 1.248–1T(a).

* * * * *

(c) through (g) [Reserved]. For further guidance, see § 1.248–1T(c) through (g).

■ **Par. 5.** Section 1.248–1T is added to read as follows:

§ 1.248–1T Election to amortize organizational expenditures (temporary).

(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) [Reserved]. For further guidance, see § 1.248–1(b).

(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 clearly 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, 2009. Under paragraph (c) of this section, Corporation X is deemed to have elected to deduct organizational expenditures under section 248(a) in 2009. Therefore, Corporation X may deduct the entire amount of the organizational expenditures in 2009, 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 deduct organizational expenditures under section 248(a) in 2009. Therefore, Corporation X may deduct $5,000 and the portion of the remaining $36,000 that is allocable to July through December of 2009 ($36,000/180 × 6 = $1,200) in 2009, the taxable year in which Corporation X begins business.

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 2011 that Corporation X incurred $10,000 for an additional organizational expenditure erroneously deducted in 2009 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 2009, including the additional $10,000 of organizational expenditures. Corporation X is using an impermissible method of accounting 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 2011.

Example 4. Subsequent redetermination of year in which business begins. The facts are the same as in *Example 2* except that, in 2010, Corporation X deducted the organizational expenditures allocable to January through December of 2010 ($36,000/180 × 12 = $2,400). In addition, in 2011 it is determined that Corporation X actually began business in 2010. Under paragraph (c) of this section, Corporation X is deemed to have elected to deduct organizational expenditures under section 248(a) in 2010. Corporation X impermissibly deducted organizational expenditures in 2009, and incorrectly determined the amount of organizational expenditures deducted in 2010. 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 2011.

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 deduct organizational expenditures under section 248(a) in 2009. 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 2009 ($54,000/180 × 6 = $1,800) in 2009, the taxable year in which Corporation X begins business.

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 deduct organizational expenditures under section 248(a) in 2009. Therefore, Corporation X may deduct the amounts allocable to July through December of 2009 ($450,000/180 × 6 = $15,000) in 2009, the taxable year in which Corporation X begins business.

(f) *Effective/applicability date.* This section applies to organizational expenditures paid or incurred after September 8, 2008. 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. Otherwise, for organizational expenditures paid or incurred prior to September 8, 2008, see § 1.248–1 in effect prior to that date (§ 1.248–1 as contained in 26 CFR part 1 edition revised as of April 1, 2008).

(g) *Expiration date.* This section expires on *July 7, 2011.*

■ **Par. 6.** Section 1.709–1 is amended by revising paragraph (b) and removing paragraph (c) to read as follows:

§ 1.709–1 Treatment of organization and syndication costs.

* * * * *

(b) [Reserved]. For further guidance, see § 1.709–1T.

■ **Par. 7.** Section 1.709–1T is added to read as follows:

§ 1.709–1T Treatment of organizational expenses and syndication costs (temporary).

(a) [Reserved]. For further guidance, see § 1.709–1(a).

(b) *Election to amortize organizational expenses*—(1) *In general.* Under section 709(b), a partnership may elect to amortize organizational expenses as defined in section 709(b)(3) and § 1.709–2(a). In the taxable year in which a partnership begins business, an

electing partnership may deduct an amount equal to the lesser of the amount of the organizational expenses of the partnership, or $5,000 (reduced (but not below zero) by the amount by which the organizational expenses exceed $50,000). The remainder of the organizational expenses is deductible ratably over the 180-month period beginning with the month in which the partnership begins business. All organizational expenses of the partnership are considered in determining whether the organizational expenses exceed $50,000, including expenses incurred on or before October 22, 2004.

(2) *Time and manner of making election.* A partnership is deemed to have made an election under section 709(b) to amortize organizational expenses as defined in section 709(b)(3) and § 1.709–2(a) for the taxable year in which the partnership begins business. A partnership may choose to forgo the deemed election by clearly electing to capitalize its organizational expenses on a timely filed Federal income tax return (including extensions) for the taxable year in which the partnership begins business. The election either to amortize organizational expenses under section 709(b) or to capitalize organizational expenses is irrevocable and applies to all organizational expenses of the partnership. A change in the characterization of an item as an organizational expense is a change in method of accounting to which sections 446 and 481(a) apply if the partnership treated the item consistently for two or more taxable years. A change in the determination of the taxable year in which the partnership begins business also is treated as a change in method of accounting if the partnership amortized organizational expenses for two or more taxable years.

(3) *Liquidation of partnership.* If there is a winding up and complete liquidation of the partnership prior to the end of the amortization period, the unamortized amount of organizational expenses is a partnership deduction in its final taxable year to the extent provided under section 165 (relating to losses). However, there is no partnership deduction with respect to its capitalized syndication expenses.

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

Example 1. Expenditures of $5,000 or less. Partnership X, a calendar year taxpayer, incurs $3,000 of organizational expenses after October 22, 2004, and begins business on July 1, 2009. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore, Partnership X may deduct the entire amount of the organizational expenses in 2009, the taxable year in which Partnership 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 Partnership X incurs organizational expenses of $41,000. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore, Partnership X may deduct $5,000 and the portion of the remaining $36,000 that is allocable to July through December of 2009 ($36,000/180 × 6 = $1,200) in 2009, the taxable year in which Partnership X begins business.

Example 3. Subsequent change in the characterization of an item. The facts are the same as in *Example 2* except that Partnership X realizes in 2011 that Partnership X incurred $10,000 for an additional organizational expense erroneously deducted in 2009 under section 162 as a business expense. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2009, including the additional $10,000 of organizational expenses. Partnership X is using an impermissible method of accounting for the additional $10,000 of organizational expenses and must change its method under § 1.446–1(e) and the applicable general administrative procedures in effect in 2011.

Example 4. Subsequent redetermination of year in which business begins. The facts are the same as in *Example 2* except that, in 2010, Partnership X deducted the organizational expenses allocable to January through December of 2010 ($36,000/180 × 12 = $2,400). In addition, in 2011 it is determined that Partnership X actually began business in 2010. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2010. Partnership X impermissibly deducted organizational expenses in 2009, and incorrectly determined the amount of organizational expenses deducted in 2010. Therefore, Partnership X is using an impermissible method of accounting for the organizational expenses and must change its method under § 1.446–1(e) and the applicable general administrative procedures in effect in 2011.

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 Partnership X incurs organizational expenses of $54,500. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore, Partnership X may deduct $500 ($5,000 − 4,500) and the portion of the remaining $54,000 that is allocable to July through December of 2009 ($54,000/180 × 6 = $1,800) in 2009, the taxable year in which Partnership X begins business.

Example 6. Expenditures of more than $55,000. The facts are the same as in *Example 1* except that Partnership X incurs organizational expenses of $450,000. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore, Partnership X may deduct the amounts allocable to July through December of 2009 ($450,000/180 × 6 = $15,000) in 2009, the taxable year in which Partnership X begins business.

(5) *Effective/applicability date.* This section applies to organizational expenses paid or incurred after September 8, 2008. However, taxpayers may apply all the provisions of this section to organizational expenses 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)(2) of this section is deemed made has not expired. Otherwise, for organizational expenses paid or incurred prior to September 8, 2008, see § 1.709–1 in effect prior to that date (§ 1.709–1 as contained in 26 CFR part 1 edition revised as of April 1, 2008).

(6) *Expiration date.* This section expires on July 7, 2011.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: June 30, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9410]

RIN 1545–BF54

Change to Office to Which Notices of Nonjudicial Sale and Requests for Return of Wrongfully Levied Property Must Be Sent

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the discharge of liens under section 7425 and return of wrongfully levied upon property under section 6343 of the Internal Revenue Code (Code) of 1986. These regulations revise regulations currently published under sections 7425 and 6343. These regulations clarify that such notices and claims should be sent to the IRS official and office specified in the relevant IRS publications. The regulations will affect parties seeking to provide the IRS with