

Approved: November 1, 1996.
Margaret Milner Richardson,
Commissioner of Internal Revenue.
Donald C. Lubick,
Acting Assistant Secretary of the Treasury.
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26 CFR Parts 1 and 602

[TD 8688]

RIN 1545-AS14

Certain Elections Under the Omnibus Budget Reconciliation Act of 1993

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the time and manner of making certain elections under the Omnibus Budget Reconciliation Act of 1993. These regulations provide guidance to persons making the elections.

EFFECTIVE DATE: December 12, 1996.

FOR FURTHER INFORMATION CONTACT: George Bradley, 202-622-4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1421. Responses to these collections of information are required to obtain the benefits of the particular election that is the subject of the collection.

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 15 minutes to 45 minutes, depending on individual circumstances, with an estimated average of 30 minutes.

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, T: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

This document contains final regulations relating to elections under the following sections of the Internal Revenue Code of 1986 (Code) and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66, 107 Stat. 312) (Act):

Act section	Code section
13114	1044(a).
13150	108(c)(3)(C).
13206(d)	163(d)(4)(B)(iii).
13225	6655(e)(2)(C).

On December 27, 1993, the Federal Register published temporary regulations (TD 8509) and a cross-reference notice of proposed rulemaking (IA-62-93), 58 FR 68300 and 58 FR 68336, respectively, relating to these elections. Three written comments responding to the regulations were submitted. Since none of the commentators requested a public hearing, one was not held. After consideration of the comments, the proposed regulations are adopted as final regulations subject to modifications to proposed § 1.108(c)-1, and the corresponding temporary regulations are removed. The comments and a description of the modifications to proposed § 1.108(c)-1 are discussed below.

Summary of Comments and Modifications

All three comments related to the election under section 163(d)(4)(B)(iii), which allows a taxpayer to take all or a portion of certain net capital gains, attributable to dispositions of property held for investment, into account as investment income. As a consequence, the capital gains affected by this election are not eligible for the maximum capital gain rate of 28 percent. The election must be made on Form 4952, Investment Interest Expense Deduction, on or before the due date (including extensions) of the income tax return for the taxable year in which the net capital gain is recognized.

The commentators questioned the authority of the IRS to require a formal election, stated that a formal election will add to the complexity of filing individual income tax returns, and suggested that taxpayers be allowed to freely change the manner in which they treat long-term capital gains, as long as

the taxable year is open. These comments were given careful consideration. However, they have not been incorporated into these final regulations. The IRS and the Treasury Department believe that the requirement of a formal election is supported by the language of section 163(d)(4)(B)(iii), is not unduly burdensome, and provides taxpayers with flexibility, since the election is revocable.

The final regulations modify the requirements for making the election for discharge of qualified real property business indebtedness under section 108(c). Under the previous temporary regulations a taxpayer was required to make the election with the taxpayer's income tax return for the taxable year in which the discharge occurred, but was permitted to file an election with an amended return or claim for credit or refund if the taxpayer established reasonable cause for failure to file the election with the original return. The final regulations require the taxpayer to make the election on the timely-filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has discharge of indebtedness income that is excludible under section 108(a). Therefore, a taxpayer that fails to make the election on that return must request the Commissioner's consent to file a late election under § 301.9100-3T or any regulations that supersede § 301.9100-3T.

Special Analyses

It has been determined that these regulations are not significant rules as defined in Executive Order 12866. 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, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, a Regulatory Flexibility Analysis 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 Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is George Bradley, Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the 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, parts 1 and 602 of title 26 of the Code of Federal Regulations are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for section 1.108(c)–1T and by adding an entry in numerical order to read as follows.

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

Section 1.108(c)–1 also issued under the authority of 26 U.S.C. 108(d)(9); * * *

§ 1.108(c)–1T [Removed]

Par. 2. Section 1.108(c)–1T is removed.

§ 1.163(d)–1T [Removed]

Par. 3. Section 1.163(d)–1T is removed.

§ 1.1044(a)–1T [Removed]

Par. 4. Section 1.1044(a)–1T is removed.

§ 1.6655(e)–1T [Removed]

Par. 5. Section 1.6655(e)–1T is removed.

Par. 6. Section 1.108(c)–1 is added to read as follows:

§ 1.108(c)–1 Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993.

(a) *Description.* Section 108(c)(3)(C), as added by section 13150 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 446), allows certain noncorporate taxpayers to elect to treat certain indebtedness described in section 108(c)(3) that is discharged after December 31, 1992, as qualified real property business indebtedness. This discharged indebtedness is excluded from gross income to the extent allowed by section 108.

(b) *Time and manner for making election.* The election described in this section must be made on the timely-filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has discharge of indebtedness income that is excludible from gross income under section 108(a).

The election is to be made on a completed Form 982, in accordance with that Form and its instructions.

(c) *Revocability of election.* The election described in this section is revocable with the consent of the Commissioner.

(d) *Effective date.* The rules set forth in this section are effective December 27, 1993.

Par. 7. Section 1.163(d)–1 is added to read as follows.

§ 1.163(d)–1 Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993.

(a) *Description.* Section 163(d)(4)(B)(iii), as added by section 13206(d) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 467), allows an electing taxpayer to take all or a portion of certain net capital gains, attributable to dispositions of property held for investment, into account as investment income. As a consequence, the capital gains affected by this election are not eligible for the maximum capital gain rate of 28 percent. The election may be made for net capital gains recognized by noncorporate taxpayers during any taxable year beginning after December 31, 1992.

(b) *Time and manner for making the election.* The election under section 163(d)(4)(B)(iii) must be made on or before the due date (including extensions) of the income tax return for the taxable year in which the net capital gain is recognized. The election is to be made on Form 4952, Investment Interest Expense Deduction, in accordance with the Form and its instructions.

(c) *Revocability of election.* The election described in this section is revocable with the consent of the Commissioner.

(d) *Effective date.* The rules set forth in this section are effective December 12, 1996.

Par. 8. Section 1.1044(a)–1 is added to read as follows.

§ 1.1044(a)–1 Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993.

(a) *Description.* Section 1044(a), as added by section 13114 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 430), generally allows individuals and C corporations that sell publicly traded securities after August 9, 1993, to elect not to recognize certain gain from the sale if the taxpayer purchases common stock or a partnership interest in a specialized small business investment company (SSBIC) within the 60-day period beginning on the date the publicly traded securities are sold.

(b) *Time and manner for making the election.* The election under section 1044(a) must be made on or before the due date (including extensions) for the income tax return for the year in which the publicly traded securities are sold. The election is to be made by reporting the entire gain from the sale of publicly traded securities on Schedule D of the income tax return in accordance with instructions for Schedule D, and by attaching a statement to Schedule D showing—

(1) How the nonrecognized gain was calculated;

(2) The SSBIC in which common stock or a partnership interest was purchased;

(3) The date the SSBIC stock or partnership interest was purchased; and

(4) The basis of the SSBIC stock or partnership interest.

(c) *Revocability of election.* The election described in this section is revocable with the consent of the Commissioner.

(d) *Effective date.* The rules set forth in this section are effective December 12, 1996.

Par. 9. Section 1.6655(e)–1 is added to read as follows.

§ 1.6655(e)–1 Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993.

(a) *Description.* Section 6655(e)(2)(C), as added by section 13225 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 486), allows a corporate taxpayer to make an annual election to use a different annualization period to determine annualized income for purposes of paying any required installment of estimated income tax for a taxable year beginning after December 31, 1993.

(b) *Time and manner for making the election.* An election under section 6655(e)(2)(C) must be made on or before the date required for the payment of the first required installment for the taxable year. For a calendar or fiscal year corporation, Form 8842, Election to Use Different Annualization Periods for Corporate Estimated Tax, must be filed by the 15th day of the 4th month of the taxable year for which the election is to apply. Form 8842 must be filed with the Internal Revenue Service Center where the corporation files its income tax return.

(c) *Revocability of election.* The election described in this section is irrevocable.

(d) *Effective date.* The rules set forth in this section are effective December 12, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 11. In § 602.101, paragraph (c) is amended as follows:

1. The following entries are removed from the table:

§ 602.101 OMB Control numbers.

* * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * *	
1.108(c)—1T	1545-1421
* * * *	
1.163(d)—1T	1545-1421
* * * *	
1.1044(a)—1T	1545-1421
* * * *	
1.6655(e)—1T	1545-1421

2. The following entries are added in numerical order to the table:

§ 602.101 OMB Control numbers.

* * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * *	
1.108(c)—1	1545-1421
* * * *	
1.163(d)—1	1545-1421
* * * *	
1.1044(a)—1	1545-1421
* * * *	
1.6655(e)—1	1545-1421

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: November 1, 1996.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

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26 CFR Parts 1 and 602

[TD 8687]

RIN 1545-AT92

Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations (TD 8687), which were published in the Federal Register on Friday, November 29, 1996 (61 FR 60540) governing the source of income from sales of natural resources or other inventory produced in the United States and sold outside the United States or produced outside the United States and sold in the United States.

EFFECTIVE DATE: December 30, 1996.

FOR FURTHER INFORMATION CONTACT: Anne Shelburne (202) 622-3880, (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

The final regulations that are the subject of these corrections are under section 863 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification. Correction of Publication Accordingly, the publication of the final regulations (TD 8687), which are the subject of FR Doc. 96-30617, is corrected as follows:

1. On page 60540, column 3, in the preamble, under the caption **DATES**, line 3, the language “*Applicability*: Taxpayers may apply” is corrected to read “*Applicability*: These regulations apply to taxable years beginning after December 30, 1996. However, taxpayers may apply”.

§ 1.863-1 [Corrected]

2. On page 60546, column 3, § 1.863-1 (e), is corrected to read as follows:

§ 1.863-1 Allocation of gross income.

* * * *

(e) *Effective dates.* The rules of paragraphs (a), (b) and (c) of this section will apply to taxable years beginning after December 30, 1996. However, taxpayers may apply the rules of this section for taxable years beginning after July 11, 1995, and on or before

December 30, 1996. For years beginning before December 30, 1996, see § 1.863-1 (as contained in 26 CFR part 1 revised as of April 1, 1996).

* * * *

§ 1.863-2 [Corrected]

3. On page 60547, column 1, § 1.863-2 (c), line 2, the language “apply to taxable years beginning” is corrected to read “apply to taxable years beginning after”.

4. On page 60547, column 2, § 1.863-2 (c), line 2 from the top of the column, the language “1995, and before December 30, 1996.” is corrected to read “1995, and on or before December 30, 1996.”.

§ 1.863-3 [Corrected]

5. On page 60550, column 3, § 1.863-3 (h), is corrected to read as follows:

§ 1.863-3 Allocation and apportionment of income from certain sales of inventory.

* * * *

(h) *Effective dates.* The rules of this section apply to taxable years beginning after December 30, 1996. However, taxpayers may apply these regulations for taxable years beginning after July 11, 1995, and on or before December 30, 1996. For years beginning before December 30, 1996, see §§ 1.863-3A and 1.863-3AT.

* * * *

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96-31717 Filed 12-10-96; 2:21 pm]

BILLING CODE 4830-01-U

NATIONAL LABOR RELATIONS BOARD**29 CFR Part 102****Rules Governing Misconduct by Attorneys or Party Representatives**

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board issues a final rule modifying its current rules governing misconduct by attorneys and party representatives.

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570. Telephone: (202)273-1940.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPR) published on May 20, 1996 (61 FR 25158), the Board proposed various