

collection extension request. For more information on this request, see <http://www.reginfo.gov>.

**DATES:** This correction is effective December 17, 2010.

**FOR FURTHER INFORMATION CONTACT:** For information on this correction, contact Thomas M. Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5641, Washington, DC 20210. Telephone: (202) 693-3700 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Correction**

In proposed rule FR Doc. 2010-29424 (75 FR 71514), beginning on page 71514 in the issue of November 23, 2010, make the following correction in the

**SUPPLEMENTARY INFORMATION** section. On page 71517, in the 2nd column, in the 8th line, delete the sentence: "The approval expires October 31, 2010." Replace that sentence with "The approval for 1205-0040 remains current on a month-by-month basis until OMB acts on the currently pending information collection extension request. For more information on this request, see <http://www.reginfo.gov>."

Signed in Washington, DC, this 13th day of December 2010.

**Jane Oates,**

*Assistant Secretary, Employment and Training Administration, Labor.*

[FR Doc. 2010-31680 Filed 12-16-10; 8:45 am]

**BILLING CODE 4510-FN-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-149335-08; RIN 1545-BI57]

#### Sales-Based Royalties and Vendor Allowances

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the capitalization and allocation of royalties that are incurred only upon the sale of property produced or property acquired for resale (sales-based royalties). This document also contains proposed regulations on adjusting the cost of

merchandise inventory for an allowance, discount, or price rebate based on merchandise sales (sales-based vendor allowances). The regulations modify the simplified production method and the simplified resale method of allocating capitalized costs between ending inventory and cost of goods sold. The regulations affect taxpayers that incur capitalizable sales-based royalties and earn sales-based vendor allowances.

**DATES:** Written or electronic comments and a request for a public hearing must be received by March 17, 2011.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-149335-08), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-149335-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-149335-08).

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations, John Roman Faron, (202) 622-4930 (not a toll-free number); concerning submission of comments or a request for a public hearing, Richard Hurst at [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains proposed amendments to 26 CFR part 1 relating to the allocation under section 263A of the Internal Revenue Code (Code) of certain sales-based royalties. Sales-based royalties are royalty costs that become due only upon the sale of property. Thus, the fact of the liability arises, and the royalty is incurred within the meaning of section 461, only upon sale.

This document also contains proposed amendments to 26 CFR part 1 relating to the determination of cost of goods in inventory under section 471 when a taxpayer receives a sales-based vendor allowance. Sales-based vendor allowances are allowances, discounts, or price rebates that a reseller receives, earns, or otherwise becomes entitled to based on the resale of a vendor's merchandise to a third party.

*Capitalization and Allocation of Sales-Based Royalties Under Section 263A*

Section 263A requires taxpayers to capitalize the direct costs and indirect

costs that are properly allocable to (1) real or tangible personal property the taxpayer produces, and (2) real property or personal property described in section 1221(a)(1) that the taxpayer acquires for resale. Taxpayers must allocate costs required to be capitalized under section 263A to property produced or acquired for resale during the taxable year using a cost allocation method described in the regulations. A taxpayer generally determines whether the cost of goods is included in cost of goods sold or in ending inventory using a cost flow assumption (for example, first-in, first-out or last-in, first-out). However, as explained later in this preamble, a taxpayer may use a simplified method to allocate costs required to be capitalized under section 263A between cost of goods sold and ending inventory.

Section 1.263A-1(e)(3)(i) defines indirect costs as all costs other than direct material costs and direct labor costs (in the case of property produced) or acquisition costs (in the case of property acquired for resale). Indirect costs are properly allocable to property produced or acquired for resale when the costs directly benefit or are incurred by reason of the performance of production or resale activities.

Section 1.263A-1(e)(3)(ii) provides a non-exclusive list of indirect costs that must be capitalized to the extent they are properly allocable to property produced or property acquired for resale. These costs include licensing and franchise costs incurred in securing the contractual right to use a trademark, corporate plan, manufacturing procedure, special recipe, or other similar right associated with property produced or property acquired for resale. Section 1.263A-1(e)(3)(ii)(U). Thus, royalty costs, including sales-based royalty costs, incurred in securing the contractual right to use a trademark, corporate plan, manufacturing procedure, special recipe, or other similar right associated with property produced or property acquired for resale, are indirect costs that are properly allocable to the property produced or acquired for resale to the extent the costs directly benefit or are incurred by reason of production or resale activities. See, for example, *Plastic Engineering & Technical Services, Inc. v. Commissioner*, TC Memo. 2001-324; but see *Robinson Knife Manufacturing Company, Inc. v. Commissioner*, No. 09-1496-ag, 2010 WL 986532 (2d Cir. March 19, 2010).

Section 1.263A-1(f) provides various "facts-and-circumstances" cost allocation methods that taxpayers may use to allocate direct and indirect costs

to units of property produced or acquired for resale. The facts-and-circumstances methods allocate costs based on a relationship between the costs incurred and the units of property produced or acquired for resale.

In lieu of a facts-and-circumstances allocation method, taxpayers may use the simplified methods provided in § 1.263A-2(b) (the simplified production method) or § 1.263A-3(d) (the simplified resale method) to allocate costs to eligible property produced or eligible property acquired for resale. The simplified methods differ from facts-and-circumstances methods in that they allocate a pool of capitalizable costs (additional section 263A costs) between ending inventory and cost of goods sold using a defined ratio rather than allocating specific costs to particular goods. Additional section 263A costs are defined in § 1.263A-1(d)(3) as the costs, other than interest, that were not capitalized under the taxpayer's method of accounting immediately prior to the effective date of section 263A, but that are required to be capitalized under section 263A. Under the simplified methods, taxpayers allocate additional section 263A costs between ending inventory and cost of goods sold using a formula that includes all additional section 263A costs incurred during the taxable year (including capitalizable sales-based royalties, if any).

#### *Section 471 Inventory Rules Related to Sales-Based Vendor Allowances*

Section 471 provides that inventories must be taken on the basis the Secretary prescribes as conforming to the best accounting practice in the trade or business and as most clearly reflecting income.

Section 1.471-2(c) permits merchants and manufacturers to value inventories at either (1) cost, or (2) cost or market, whichever is lower. Under § 1.471-3(b), the cost of merchandise purchased by taxpayers in general is the invoice price less trade or other discounts.

Section 1.471-8 allows a retail merchant to use the retail inventory method to arrive at an approximate cost of goods in ending inventory. This cost is determined by multiplying the aggregate selling prices of the goods in ending inventory by the ratio of (1) the cost of the goods in beginning inventory plus the cost of goods purchased during the year, to (2) the retail selling prices of the goods in beginning inventory plus the retail selling prices of inventory purchased during the year, with proper adjustments to the selling prices for mark-ups and mark-downs. However, retail selling prices are not adjusted for

temporary mark-downs. Rev. Rul. 79-115 (1979-1 CB 185), *see* § 601.601(d)(2).

#### **Explanation of Provisions**

##### *1. Capitalization and Allocation of Sales-Based Royalties Under Section 263A*

The proposed regulations clarify that sales-based royalties, like other royalties, may be capitalizable to property a taxpayer produces or acquires for resale, but also provide that sales-based royalties required to be capitalized are allocable only to property that a taxpayer has sold.

In *Robinson Knife*, the Court of Appeals for the Second Circuit held that royalties for the right to use certain trademarks in manufacturing kitchen tools were not allocable to the property produced because the taxpayer's royalty payments were calculated as a percentage of net sales and were incurred only on the sale of the product. The court stated that the royalty costs were not incurred by reason of and did not directly benefit the performance of production activities, and therefore were not capitalizable under the section 263A regulations. The court reasoned that, although the licensing agreements may have directly benefited or been incurred by reason of production activities, the regulations did not require the capitalization of the royalty costs because the costs themselves did not directly benefit and were not incurred by reason of the performance of production activities.

The proposed regulations are consistent with the court's conclusion that, because of their relationship to sales, sales-based royalties inherently should not be capitalized to ending inventory. Because sales-based royalties are not incurred (within the meaning of section 461) until a unit of property is sold, sales-based royalties are more directly related to units of property sold during the taxable year than to unsold units. Therefore, the proposed regulations provide that capitalizable sales-based royalties are properly allocable to units of property produced or acquired for resale that are sold, or deemed sold, during the taxable year.

However, *Robinson Knife* misconstrued the nature of costs required to be capitalized. Royalties are the costs associated with the right to use intellectual property such as copyrighted works or patented inventions. If the use of those rights directly benefits or is incurred by reason of production activities, then the cost of securing those rights do as well. The fact that the amount of sales-based

royalties is determined by reference to the number of units of property a taxpayer sells or is calculated as a percentage of revenue from the sale of inventory affects when a taxpayer incurs (within the meaning of section 461) that amount, but does not change an otherwise capitalizable production or resale cost into a non-capitalizable cost. Therefore, the proposed regulations also clarify that an indirect cost may directly benefit or be incurred by reason of the performance of production or resale activities even if the costs are incurred only upon the sale of inventory. Sales-based royalties, like other costs that directly benefit or are incurred by reason of production or resale activities, are capitalizable licensing and franchise costs within the meaning of § 1.263A-1(e)(3)(ii)(U).

The proposed regulations achieve a similar result to that in *Robinson Knife*, but rather than determining that sales-based royalty costs are inherently non-capitalizable, the proposed regulations provide that otherwise capitalizable sales-based royalty costs are properly allocable to property sold during the taxable year.

##### *2. Sales-Based Vendor Allowances*

Under § 1.471-3(b), the cost of merchandise a taxpayer purchases generally is the invoice price less trade or other discounts. A sales-based vendor allowance is an allowance, discount, or price rebate a taxpayer earns as a result of selling a vendor's merchandise, typically at a temporarily reduced price. The taxpayer's right to receive the sales-based vendor allowance depends on actual sales of the vendor's products. The amount received directly relates to the specific merchandise the taxpayer sells and properly is treated as a reduction in the cost of that merchandise. Therefore, the proposed regulations clarify that a sales-based vendor allowance is an adjustment to the cost of the merchandise sold or deemed sold under the taxpayer's cost flow assumption.

##### *3. Adjusting the Cost of Goods Sold and Goods in Ending Inventory*

Sales-based royalties and sales-based vendor allowances are properly allocable to property sold during the taxable year. Therefore, it is inappropriate to treat sales-based royalties and sales-based vendor allowances as adjustments to the cost of goods in ending inventory. The proposed regulations provide that sales-based royalties and sales-based vendor allowances are allocable to the units of property sold or deemed sold under the taxpayer's cost flow assumption and are

not included in determining the inventory cost or value of goods on hand at the end of the taxable year under any inventory method.

Because the proposed regulations expressly allocate sales-based royalties and sales-based vendor allowances to property that has been sold or deemed sold, the proposed regulations revise the simplified production and simplified resale methods to remove costs such as capitalizable sales-based royalties and cost reductions such as sales-based vendor allowances, which are properly allocable to property that has been sold, from the formulas used to allocate additional section 263A costs to ending inventory. Taxpayers must continue to include capitalizable sales-based royalty costs in both the numerator and denominator of the production cost allocation ratio under § 1.263A-1(h)(5) for purposes of determining capitalized mixed service costs under the simplified service cost method.

The proposed regulations do not modify the retail inventory method under § 1.471-8 specifically. Section 1.471-3 and section 263A determine the cost of purchases for purposes of the retail inventory method, and the proposed regulations under §§ 1.263A-1 and 1.471-3 preclude a taxpayer from including sales-based royalties and sales-based vendor allowances in the cost of goods in the fraction used to determine the value of ending inventory under § 1.471-8. Similarly, if the selling price markdown in a sales-based vendor allowance arrangement is temporary, the retail selling price component of the fraction is not adjusted.

**Effective/Applicability Date**

These regulations are proposed to apply for taxable years ending on or after the date the regulations are published as final regulations in the **Federal Register**.

**Special Analyses**

This notice of proposed rulemaking 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. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely to the IRS. Comments may be submitted electronically or via a signed original with eight (8) copies. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these regulations is John Roman Faron of the Office of the Associate Chief Counsel (Income Tax and 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.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be 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 \* \* \*
- Section 1.263A-1 also issued under 26 U.S.C. 263A.
- Section 1.263A-2 also issued under 26 U.S.C. 263A.
- Section 1.263A-3 also issued under 26 U.S.C. 263A. \* \* \*
- Section 1.471-3 also issued under 26 U.S.C. 471. \* \* \*

**Par. 2.** Section 1.263A-0 is amended by adding new entries for §§ 1.263A-1(c)(5), 1.263A-1(k), 1.263A-1(l), 1.263A-2(b)(3)(ii)(C), 1.263A-2(e), 1.263A-2(f), 1.263A-3(d)(3)(i)(C)(3), and 1.263A-3(f) and revising the entry for §§ 1.263A-1(e)(3)(ii) in the table of contents to read as follows:

**§ 1.263A-0 Outline of regulations under section 263A.**

\* \* \* \* \*

**§ 1.263A-1 Uniform Capitalization of Costs.**

\* \* \* \* \*

- (c) \* \* \*
- (5) Costs allocable only to sold property.
- \* \* \* \* \*
- (e) \* \* \*
- (3) \* \* \*
- (ii) Types of indirect costs required to be capitalized.
- \* \* \* \* \*
- (k) Change in method of accounting.
  - (1) In general.
  - (2) Scope limitations.
  - (3) Audit protection.
  - (4) Section 481(a) adjustment.
  - (5) Time for requesting change.
  - (l) Effective/applicability date.

**§ 1.263A-2 Rules Relating to Property Produced by the Taxpayer.**

- \* \* \* \* \*
- (b) \* \* \*
- (3) \* \* \*
- (ii) \* \* \*
- (C) Costs allocable only to sold property.
- \* \* \* \* \*
- (e) Change in method of accounting.
  - (1) In general.
  - (2) Scope limitations.
  - (3) Audit protection.
  - (4) Section 481(a) adjustment.
  - (5) Time for requesting change.
  - (f) Effective/applicability date.

**§ 1.263A-3 Rules Relating to Property Acquired for Resale.**

- \* \* \* \* \*
- (d) \* \* \*
- (3) \* \* \*
- (i) \* \* \*
- (C) \* \* \*
- (3) Costs allocable only to sold property.
- \* \* \* \* \*
- (f) Effective/applicability date.
- \* \* \* \* \*

**Par. 3.** Section 1.263A-1 is amended by:

1. Adding a new paragraph (c)(5).
  2. Revising paragraph (e)(3)(i).
  3. Revising the introductory text of paragraph (e)(3)(ii).
  3. Redesignating paragraph (e)(3)(ii)(U) as paragraph (e)(3)(ii)(U)(1) and adding a sentence to the end of newly-designated paragraph (e)(3)(ii)(U)(1).
  4. Adding a new paragraph (e)(3)(ii)(U)(2).
  5. Revising paragraph (l).
- The additions and revisions read as follows:

**§ 1.263A-1 Uniform capitalization of costs.**

- \* \* \* \* \*
- (c) \* \* \*
- (5) Costs allocable only to sold property. Any cost that is required

under this section, § 1.263A-2, or § 1.263A-3, to be allocated only to property sold, or deemed to be sold under the inventory cost flow assumption (such as first-in, first-out, last-in, first-out, or a specific-goods method) the taxpayer uses to identify the costs in ending inventory, must be included in cost of goods sold and is not included in determining the inventory cost or value of goods on hand at the end of the taxable year.

\* \* \* \* \*

- (e) \* \* \*
- (3) \* \* \*

(i) *In general.* (A) Indirect costs are defined as all costs other than direct material costs and direct labor costs (in the case of property produced) or acquisition costs (in the case of property acquired for resale). Taxpayers subject to section 263A must capitalize all indirect costs properly allocable to property produced or property acquired for resale. Indirect costs are properly allocable to property produced or property acquired for resale when the costs directly benefit or are incurred by reason of the performance of production or resale activities. Indirect costs may directly benefit or be incurred by reason of the performance of production or resale activities even if the costs are calculated as a percentage of sales revenue from inventory or are incurred only upon the sale of inventory. Indirect costs may be allocable to both production and resale activities, as well as to other activities that are not subject to section 263A. Taxpayers must make a reasonable allocation of indirect costs between production, resale, and other activities.

(B) *Example.* The following example illustrates the provisions of this paragraph (e)(3)(i):

*Example.* (i) Taxpayer A manufactures tablecloths and other linens. A enters into a licensing agreement with Company L under which A may label its tablecloths with L's trademark if the tablecloths meet certain specified quality standards. In exchange for its right to use L's trademark, the licensing agreement requires A to pay L a royalty of \$X for each tablecloth carrying L's trademark that A sells. The licensing agreement does not require A to pay L any minimum or lump-sum royalties.

(ii) The licensing agreement provides A with the right to use L's intellectual property, a trademark. The licensing agreement also requires A to conduct its production activities according to certain standards as a condition of exercising that right. Thus, A's right to use L's trademark under the licensing agreement is directly related to A's production of tablecloths. The royalties the licensing agreement requires A to pay for using L's trademark are the costs A incurs in exchange for these rights. Therefore, although

A incurs royalty costs only when A sells a tablecloth carrying L's trademark, the royalty costs directly benefit production activities and are incurred by reason of production activities within the meaning of paragraph (e)(3)(i) of this section.

(ii) *Types of indirect costs required to be capitalized.* The following are types of indirect costs that must be capitalized to the extent they are properly allocable to property produced or property acquired for resale:

\* \* \* \* \*

(U) *Licensing and franchise costs.* (1) \* \* \* These costs also include fees, payments, and royalties otherwise described in this paragraph (e)(3)(ii)(U) that a taxpayer incurs (within the meaning of section 461) only upon the sale of property produced or acquired for resale.

(2) If a taxpayer incurs (within the meaning of section 461) a fee, payment, or royalty described in this paragraph (e)(3)(ii)(U) only upon the sale of property produced or acquired for resale and the cost is required to be capitalized under this paragraph (e)(3), the cost is allocable only to the property that has been sold or, for inventory property, deemed to be sold under the inventory cost flow assumption (such as first-in, first-out; last-in, first-out; or a specific-goods method) the taxpayer uses to identify the costs in ending inventory.

\* \* \* \* \*

(l) *Effective/applicability date.* (1) Paragraphs (h)(2)(i)(D), (k), and (l) of this section apply for taxable years ending on or after August 2, 2005.

(2) Paragraphs (c)(5), (e)(3)(i), and (e)(3)(ii)(U) of this section apply for taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**.

**Par. 4.** Section 1.263A-2 is amended by:

1. Adding paragraphs (b)(3)(ii)(C) and (b)(4)(ii)(A)(4).

2. Revising paragraph (f).  
The additions and revision read as follows:

**§ 1.263A-2 Rules relating to property produced by the taxpayer.**

\* \* \* \* \*

- (b) \* \* \*
- (3) \* \* \*
- (ii) \* \* \*

(C) *Costs allocable only to sold property.* Additional section 263A costs incurred during the taxable year, as defined in paragraph (b)(3)(ii)(A)(1) of this section, section 471 costs incurred during the taxable year, as defined in paragraph (b)(3)(ii)(A)(2) of this section, and section 471 costs remaining on hand at year end, as defined in paragraph (b)(3)(ii)(B) of this section, do

not include costs specifically described in § 1.263A-1(e)(3)(ii) or cost reductions described in § 1.471-3(e) as properly allocable only to property that has been sold or, for inventory property, deemed to be sold under the inventory cost flow assumption (such as first-in, first-out; last-in, first-out; or a specific-goods method) a taxpayer uses to identify the costs in ending inventory.

\* \* \* \* \*

- (4) \* \* \*
- (ii) \* \* \*
- (A) \* \* \*

(4) Additional section 263A costs incurred during the test period, as defined in paragraph (b)(4)(ii)(A)(2) of this section and section 471 costs incurred during the test period, as defined in paragraph (b)(4)(ii)(A)(3) of this section, do not include costs specifically described in § 1.263A-1(e)(3)(ii) or cost reductions described in § 1.471-3(e) as properly allocable only to property that has been sold or, for inventory property, deemed to be sold under the inventory cost flow assumption (such as first-in, first-out; last-in, first-out; or a specific-goods method) a taxpayer uses to identify the costs in ending inventory.

\* \* \* \* \*

(f) *Effective/applicability date.* (1) Paragraphs (b)(2)(i)(D), (e), and (f) of this section apply for taxable years ending on or after August 2, 2005.

(2) Paragraphs (b)(3)(ii)(C) and (b)(4)(ii)(A)(4) of this section apply for taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**.

**Par. 5.** In § 1.263A-3, paragraphs (d)(3)(i)(C)(3), (d)(3)(i)(D)(3), (d)(3)(i)(E)(3), and (f) are added to read as follows:

**§ 1.263A-3 Rules relating to property acquired for resale.**

\* \* \* \* \*

- (d) \* \* \*
- (3) \* \* \*
- (i) \* \* \*
- (C) \* \* \*

(3) *Costs allocable only to sold property.* Section 471 costs remaining on hand at year end, as defined in paragraph (d)(3)(i)(C)(2) of this section, do not include costs that are specifically described in § 1.263A-1(e)(3)(ii) or cost reductions described in § 1.471-3(e) as properly allocable only to property that has been sold or, for inventory property, deemed to be sold under the inventory cost flow assumption (such as first-in, first-out; last-in, first-out; or a specific-goods method) a taxpayer uses to identify the costs in ending inventory.

- (D) \* \* \*

(3) Current year's storage and handling costs, beginning inventory, and current year's purchases, as defined in paragraph (d)(3)(i)(D)(2) of this section, do not include costs that are specifically described in § 1.263A-1(e)(3)(ii) or cost reductions described in § 1.471-3(e) as properly allocable only to property that has been sold or, for inventory property, deemed to be sold under the inventory cost flow assumption (such as first-in, first-out; last-in, first-out; or a specific-goods method) a taxpayer uses to identify the costs in ending inventory.

(E) \* \* \*

(3) Current year's purchasing costs and current year's purchases, as defined in paragraph (d)(3)(i)(E)(2) of this section, do not include costs that are specifically described in § 1.263A-1(e)(3)(ii) or cost reductions described in § 1.471-3(e) as properly allocable only to property that has been sold or, for inventory property, deemed to be sold under the inventory cost flow assumption (such as first-in, first-out; last-in, first-out; or a specific-goods method) a taxpayer uses to identify the costs in ending inventory.

\* \* \* \* \*

(f) *Effective/applicability date.* Paragraphs (d)(3)(i)(C)(3), (d)(3)(i)(D)(3), and (d)(3)(i)(E)(3) of this section apply for taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**.

**Par. 6.** Section 1.471-3 is amended by:

1. Adding paragraphs (e) and (g).
2. Designating the undesignated text following paragraph (d) as paragraph (f).

The additions read as follows:

**§ 1.471-3 Inventories at cost.**

\* \* \* \* \*

(e) The amount of an allowance, discount, or price rebate a taxpayer earns by selling specific merchandise is a reduction in the cost (as determined under paragraph (a), (b), or (d) of this section) of the merchandise sold or deemed to be sold under the inventory cost flow assumption (such as first-in, first-out; last-in, first-out; or a specific-goods method) the taxpayer uses to identify the costs in ending inventory. This amount decreases cost of goods sold and does not reduce the inventory cost or value of goods on hand at the end of the taxable year.

\* \* \* \* \*

(g) *Effective/applicability date.* Paragraph (f) of this section applies to taxable years ending on or after the date

these regulations are published as final regulations in the **Federal Register**.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2010-31597 Filed 12-16-10; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY**

**Alcohol and Tobacco Tax and Trade Bureau**

**27 CFR Part 9**

**[Docket No. TTB-2010-0003; Notice No. 112; re: Notice Nos. 105 and 107]**

**RIN 1513-AB41**

**Proposed Establishment of the Pine Mountain-Mayacmas Viticultural Area; Comment Period Reopening**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau is reopening the comment period for Notice No. 105, which concerned a proposal to establish an American viticultural area having the name Pine Mountain-Mayacmas. This reopening of the comment period solicits comments from the public on issues that were raised in public comments received in response to Notice No. 105. Three specific issues which we seek comments on concern the proper name for the proposed viticultural area, the viticultural significance of a suggested alternative name for the viticultural area, and the propriety of expanding the boundary of the proposed viticultural area.

**DATES:** We must receive written comments on or before February 15, 2011.

**ADDRESSES:** You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov:* Use the comment form for this notice as posted within Docket No. TTB-2010-0003 on "Regulations.gov," the Federal e-rulemaking portal, to submit comments via the Internet;

- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412.

- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and

requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of all published notices and all comments received about this proposal within Docket No. TTB-2010-0003 at <http://www.regulations.gov>. A direct link to this docket is posted on the TTB Web site at <http://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 105. You also may view copies of all published notices, all supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202-453-2270 to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** Elisabeth C. Kann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200-E, Washington, DC 20220; phone 202-453-2002.

**SUPPLEMENTARY INFORMATION:**

**Petition History**

The Alcohol and Tobacco Tax and Trade Bureau (TTB) received a petition from Sara Schorske of Compliance Service of America, prepared and filed on her own behalf and on behalf of local wine industry members, to establish the 4,600-acre "Pine Mountain-Mayacmas" American viticultural area in northern California. About two-thirds of the proposed viticultural area lies in the extreme southern portion of Mendocino County, with the remaining one-third located in the extreme northern portion of Sonoma County. The proposed Pine Mountain-Mayacmas viticultural area is totally within the multicounty North Coast viticultural area (27 CFR 9.30), and it overlaps the northernmost portions of the established Alexander Valley viticultural area (27 CFR 9.53) and the Northern Sonoma viticultural area (27 CFR 9.70).

In Notice No. 105, published in the **Federal Register** (75 FR 29686) on May 27, 2010, TTB described the petitioners' rationale for the proposed establishment of the Pine Mountain-Mayacmas viticultural area and requested comments on the proposal on or before July 26, 2010.

On July 16, 2010, TTB received a letter request from attorney Richard Mendelson on behalf of the Napa Valley Vintners (NVV), a wine industry trade association. The request explained that due to periodic scheduling of the NVV's committee and board of directors meetings, the group would be unable to meet the original July 26, 2010, comment deadline for Notice No. 105.