

**PART 12—TEMPORARY INCOME
TAX REGULATIONS UNDER THE
REVENUE ACT OF 1971**

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AUTHORITY: 26 U.S.C. 167, 263, and 7805.

§ 12.3 Investment credit, public utility property elections.

(a) *Elections*—(1) *In general.* Under section 46(e), three elections may be made on or before March 9, 1972, with respect to section 46(e) property (as defined in subparagraph (3) of this paragraph). An election made under the provisions of section 46(e) shall be irrevocable.

(2) *Applicability of elections.* (i) Any election under section 46(e) shall be made with respect to all of the taxpayer's property eligible for the election whether or not the taxpayer is regulated by more than one regulatory body.

(ii)(a) Paragraph (1) of section 46(e) shall apply to all of the taxpayer's section 46(e) property in the absence of an election under paragraph (2) or (3) of section 46(e). If an election is made under paragraph (2) of section 46(e), paragraph (1) of such section shall not apply to any of the taxpayer's section 46(e) property.

(b) An election made under the last sentence of section 46(e)(1) shall apply to that portion of the taxpayer's section 46(e) property to which paragraph (1) of section 46(e) applies and which is short supply property within the meaning of § 1.46-5(b)(2) of this chapter (Income Tax Regulations) as set forth in a notice of proposed rule making published in 37 FR 3526 on February 17, 1971.

(iii) If a taxpayer makes an election under paragraph (2) of section 46(e), and makes no election under paragraph (3) of such section, the election under paragraph (2) of section 46(e) shall

apply to all of its section 46(e) property.

(iv) If a taxpayer makes an election under paragraph (3) of section 46(e), such election shall apply to all of the taxpayer's section 46(e) property to which section 167(1)(2)(C) applies. Paragraph (1) or (2) of section 46(e) (as the case may be) shall apply to that portion of the taxpayer's section 46(e) property which is not property to which section 167(1)(2)(C) applies. Thus, for example, if a taxpayer makes an election under paragraph (2) of section 46(e), and also makes an election under paragraph (3) of section 46(e), paragraph (3) shall apply to all of the taxpayer's section 46(e) property to which section 167(1)(2)(C) applies and paragraph (2) shall apply to the remainder of the taxpayer's section 46(e) property.

(3) *Section 46(e) property.* "Section 46(e) property" is section 38 property which is both property described in section 50 and is—

(i) Public utility property within the meaning of section 46(c)(3)(B) (other than nonregulated communication property of the type described in the last sentence of section 46(c)(3)(B)), or

(ii) Property used predominantly in the trade or business of the furnishing or sale of (a) steam through a local distribution system or (b) the transportation of gas or steam by pipeline, if the rates for such furnishing or sale are established or approved by a governmental unit, agency, instrumentality, or commission described in section 46(c)(3)(B).

(b) *Method of making elections.* A taxpayer may make the elections described in section 46(e) by filing a statement, on or before March 9, 1972, with the district director or director of the internal revenue service center with whom the taxpayer ordinarily files its income tax return. For rules in the case of taxpayers filing consolidated returns, see § 1.1502-77(a) of this chapter (Income Tax Regulations). Such statement shall contain the following information:

(1) The name, address, and taxpayer identification number of the taxpayer,

(2) The paragraph (or paragraphs) of section 46(e) under which the taxpayer is making the election,

(3) If an election is made under the last sentence of section 46(e)(1), the name and address of all regulatory bodies which have jurisdiction over the taxpayer with respect to the section 46(e) property covered by such election and a statement setting forth the type of the public utility activity described in section 46(e)(5)(B) in which the taxpayer engages, and

(4) If an election is made under paragraph (3) of section 46(e), a statement indicating whether an election has been made by the taxpayer under section 167(1)(4)(A).

[T.D. 7161, 37 FR 3511, Feb. 17, 1972]

§ 12.4 Election of Class Life Asset Depreciation Range System (ADR).

(a) *Elections filed before February 1, 1972.* No election or tax return shall be filed which does not conform to section 109 of the Revenue Act of 1971 (Pub. L. 92-178, 85 Stat. 508). If a taxpayer has before February 1, 1972 filed an election and a tax return in accordance with § 1.167(a)-11 of this chapter (relating to depreciation allowances using the Asset Depreciation Range System published in the FEDERAL REGISTER for June 23, 1971), such election will be treated as an election under the Class Life Asset Depreciation Range System (ADR) as contained in section 109 of the Revenue Act of 1971 and the proposed amendments to § 1.167(a)-11 of this chapter published in the FEDERAL REGISTER for January 27, 1972, provided that the election conforms with the provisions of the Class Life Asset Depreciation Range System (ADR) contained in section 109 of the Revenue Act of 1971 and the amendments to the regulations as finally adopted. Such an election and the determination of tax liability on the tax return are subject to the terms and conditions of section 109 of the Revenue Act of 1971 and the final regulations prescribing the Class Life Asset Depreciation Range System (ADR). (For revocation of an election, see paragraph (c) of this section.) An election and tax return filed before February 1, 1972, which does not conform with the final regulations prescribing the Class Life Asset Depreciation Range System (ADR) is an invalid election unless corrected by an amended tax return and election filed no later

than the time permitted by paragraph (c) of this section. If a valid election under § 1.167(a)-11 of this chapter is not filed for a taxable year, the taxpayer is required to file or amend his tax return and determine tax liability for the taxable year without regard to § 1.167(a)-11 of this chapter.

(b) *Elections filed after January 31, 1972.* No election or tax return shall be filed which does not conform with section 109 of the Revenue Act of 1971. An election and tax return filed under § 1.167(a)-11 of this chapter after January 31, 1972, and before the final amendments to the regulations are published in the FEDERAL REGISTER, should be filed in accordance with section 109 of the Revenue Act of 1971 and the proposed amendments to § 1.167(a)-11 of this chapter relating to the Class Life Asset Depreciation Range System (ADR). Such election and the determination of tax liability on the tax return are subject to the terms and conditions of section 109 of the Revenue Act of 1971 and the final regulations prescribing the Class Life Asset Depreciation Range System (ADR). An election and tax return filed after January 31, 1972, which does not conform with the final regulations prescribing the Class Life Asset Depreciation Range System (ADR), is not a valid election unless corrected by an amended tax return and election filed no later than the time permitted by paragraph (c) of this section. (For revocation of election, see paragraph (c) of this section.) If a valid election under § 1.167(a)-11 of this chapter is not filed for a taxable year the taxpayer is required to file or amend his tax return and determine tax liability for the taxable year without regard to § 1.167(a)-11 of this chapter.

(c) *Special rule for election and revocation.* Notwithstanding the rules of § 1.167(a)-11 of this chapter, a taxpayer is permitted to make, amend or revoke an election under § 1.167(a)-11 of this chapter at any time before the latest of (1) the time the taxpayer files his first return for the taxable year of election, (2) 120 days after the final regulations prescribing the Class Life Asset Depreciation Range System (ADR) are published in the FEDERAL REGISTER, or (3) the time prescribed by law (including