

make the amendments listed in paragraph (c) (2) and (3) applicable to transactions occurring prior to commencement of the case (or similar proceeding) or transactions not in the case (or similar proceeding).

(2) *Amendments affected.* An election under this section changes the effective date of the amendments to the following sections:

(i) 111, relating to recovery of bad debts, prior taxes, and delinquency amounts,

(ii) 302, relating to the repeal of special treatment for certain railroad redemptions,

(iii) 312, relating to the effect of debt discharge on earnings and profits,

(iv) 337, relating to the application of the 12-month liquidation rule,

(v) 351, relating to certain transfers to controlled corporations,

(vi) 354 (other than the amendment made by section 6(i)(2) of the Bankruptcy Tax Act of 1980), 355, 357, 368, and 381, relating to corporate reorganizations,

(vii) 382, relating to special limitations on net operating loss carryover,

(viii) 542, relating to the personal holding company tax, and

(ix) 703, relating to elections of partnerships.

(3) *Other amendments affected in part.* Subject to the transitional rule of section 7(a)(2) of the Bankruptcy Tax Act of 1980, an election under this section changes the effective date of the amendments to sections 108 and 1017, relating to the tax treatment of discharge of indebtedness.

(4) *Substitution of effective dates.* The election under this section changes the effective date of the amendments listed in paragraph (c) (2) and (3) of this section by substituting "September 30, 1979" for "December 31 1980" wherever it appears in section 7(a), (c), and (d) of the Bankruptcy Tax Act of 1980.

(d) *Time and manner—(1) Time and place.* A debtor makes the election under this section by filing the written statement and evidence of court approval required under paragraph (d) (2) and (3) of this section on or before November 2, 1981, with the District Director or the Director of the Internal Revenue Service Center with whom an income tax return for the debtor would

be filed if it were due on the date the election is filed. The election shall be considered to be made on the date on which the written statement and evidence of court approval is filed. The debtor should attach a copy of the statement and evidence of court approval to the next income tax return filed on or after the date the election is made.

(2) *Statement.* The written statement must be signed by the debtor (or a person duly authorized to sign the income tax return of the debtor) and must contain the following:

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

(ii) A statement that the debtor is making the election under section 7(f) of the Bankruptcy Tax Act of 1980, and

(iii) Information (including the date of commencement) sufficient to identify the bankruptcy case or similar proceeding.

(3) *Evidence of court approval.* The evidence of court approval (or of approval of an agency in certain proceedings described in paragraph (b) of this section) must be a copy of an order or other document properly signed by the judge or other presiding officer. In addition to information identifying the debtor and the case or proceeding over which the officer presides, the order or other document must state that the court (or agency, as the case may be) approves the election of the debtor under section 7(f) of the Bankruptcy Tax Act of 1980.

(e) *Revocability.* An election under this section may be revoked only with the consent of the Commissioner. A request for revocation can be made only with approval of the court (or agency).

[T.D. 7775, 46 FR 25292, May 6, 1981. Redesignated by T.D. 8435, 57 FR 43896, Sept. 23, 1992]

§ 301.9100-16T Election to accrue vacation pay.

(a) *In general.* Section 463 provides that taxpayers whose taxable income is computed under an accrual method of accounting may elect without the consent of the Commissioner, to deduct certain amounts with respect to vacation pay which, because of contingencies, would not otherwise be deductible. Such election must apply to the liability for all vacation pay accounts maintained by the taxpayer within a

single trade or business if the liability is contingent when vacation pay is earned.

(b) *Time for making election.* (1) In the case of a taxpayer who established or maintained a vacation pay account pursuant to I.T. 3956 and who continued to maintain such account pursuant to section 97 of the Technical Amendments Act of 1958, as amended, for its last taxable year ending before January 1, 1973, the election must be made for each trade or business for which such account was maintained on or before the later of (i) July 21, 1975, or (ii) the due date for filing the income tax return (determined with regard to any extensions of time granted the taxpayer for filing such return) for the first taxable year beginning after December 31, 1973. The election pursuant to this paragraph shall be effective with respect to an account described in this paragraph (b)(1) for taxable years ending after December 31, 1972. Failure to file such election shall constitute a change in the method of accounting for vacation pay for the first taxable year ending after December 31, 1972. Such change in accounting method will be considered a change initiated by the taxpayer.

(2) In the case of a trade or business of a taxpayer to which paragraph (b)(1) does not apply, the election provided for in this section may be made for any taxable year beginning after December 31, 1973, by making the election not later than (i) July 21, 1975, or (ii) the due date for filing the income tax return (determined with regard to any extensions of time granted the taxpayer for filing such return) for the first taxable year for which the election is made.

(3) A taxpayer who elects under section 463 to treat vacation pay as provided in this section and who wishes to revoke such election may only do so with the consent of the Commissioner. Such revocation shall constitute a change in the method of accounting.

(c) *Manner of making election.* (1) Except as otherwise provided in paragraph (c)(2) of this section, the election provided for in this section must be made by means of a statement attached to a timely filed income tax return. The statement shall indicate that

the taxpayer is electing to apply the provisions of section 463, and shall contain the following information:

(i) The taxpayer's name and a description of each vacation pay plan to which the election is to apply.

(ii) A schedule with appropriate explanations showing—

(A) In the case of a vacation pay account established or maintained pursuant to I.T. 3956 and section 97 of the Technical Amendments Act of 1958, as amended,

(1) The balance of each such vacation pay account maintained by the taxpayer, and

(2) The amount, determined as if the taxpayer had maintained a vacation pay account for the last taxable year ending before January 1, 1973, representing the taxpayer's liability for vacation pay earned by employees, before the close of the taxable year and payable during such taxable year or within 12 months following the close of such taxable year.

(B) In the case of other vacation pay accounts, the amount of the closing balances the taxpayer would have had for the taxpayer's 3 taxable years immediately preceding the taxable year for which the election was made, had the taxpayer maintained an account representing the taxpayer's liability for vacation pay earned by the employees before the close of the taxable year and payable during the taxable year or within 12 months following the close of the taxable year throughout the 3 immediately preceding taxable years.

(iii) The amounts accrued and deducted for prior years for vacation pay but not paid at the close of the taxable year preceding the year for which the election is made.

(2) Where a taxpayer has filed its return for a taxable year beginning after December 31, 1973 prior to July 21, 1975, and has not made the election pursuant to this section, the election may be made by filing an amended return (showing adjustments, in any) for such year and attaching the statement required by paragraph (c)(1) of this section on or before July 21, 1975.

(d) The time for making the election may be illustrated by the following examples:

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Example (1). X, whose taxable year begins on February 1, files its return based on the accrual method of accounting. X has continuously accrued and deducted for income tax purposes contingent amounts of vacation pay, pursuant to I.T. 3956. Pursuant to section 463 and these regulations, in order for X to continue accruing and deducting its vacation pay amounts, X must elect to account for vacation pay under section 463 by attaching the election to its timely filed return for its taxable year ending on January 31, 1975, or if X has already filed such return by July 21, 1975, without such election, by filing the election statement with an amended return by July 21, 1975. If X does not make the election under section 463, X will be treated as having initiated a change in its method of accounting for vacation pay in its taxable year ending on January 31, 1973.

Example (2). Y, a calendar year taxpayer files its returns based on the accrual method of accounting. Y deducted its vacation pay amounts only when paid since such amounts were contingent when earned and Y was not entitled to the benefits of I.T. 3956. Y may elect for its taxable year ending on December 31, 1974, to deduct certain amounts with respect to contingent vacation pay which

were not otherwise deductible, by filing an election pursuant to these regulations with its timely filed income tax return for such year or if such return was already filed by [insert date 90 days after publication of this document as a Treasury decision], without such election, by filing the election with an amended return filed by July 21, 1975. If Y does not make the election for its taxable year ending on December 31, 1974, Y may make the election with respect to any subsequent taxable year by filing an election with its return for such year.

[T.D. 7353, 40 FR 17554, Apr. 21, 1975; 40 FR 25590, June 17, 1975. Redesignated by T.D. 8435, 57 FR 43896, Sept. 23, 1992]

§ 301.9100-17T Procedure applicable to certain elections.

(a) *Elections covered by temporary rules.* The sections of the Internal Revenue Code of 1954, or of the Tax Reform Act of 1969, to which paragraph (b) of this section applies and under which an election or notification may be made pursuant to the procedures prescribed in such paragraph are as follows:

| Section | Description of election | Availability of election |
|--------------------------|---|--|
| (1) First category: | | |
| 231(d)(2) of Act | Moving expenses | Expenses paid or incurred before July 1, 1970, if employee was notified of move by employer on or before Dec. 19, 1969. |
| 503(c)(2) of Act | Carved-out mineral production payments | All mineral production payments carved out of mineral properties after beginning of last taxable year ending before Aug. 7, 1969. |
| 516(d)(3) of Act | Contingent payments by transferee of franchise, trademark, or trade name. | Payments made in taxable years ending after Dec. 31, 1969, and beginning before Jan. 1, 1980, on transfers made before Jan. 1, 1970. |
| 642(c)(1) of Code | Charitable contributions of estates or trusts paid in following year. | Amounts paid in any taxable year beginning after Dec. 31, 1969. |
| 1251(b)(4) of Code | No additions to excess deductions account of taxpayers electing to compute taxable income from farming in certain manner. | Any taxable year beginning after Dec. 31, 1969. |
| (2) Second category: | | |
| 184(b) of Code | Amortization of qualified railroad rolling stock .. | Any taxable year beginning after Dec. 31, 1969, in which rolling stock was placed in service (or succeeding taxable year). |
| (3) Third category: | | |
| 504(d)(2) of Act | Notification not to have sec. 615(e) election treated as a sec. 617(a) election. | Exploration expenditures paid or incurred after Dec. 31, 1969. |

(b) *Manner of making election or serving notice—*(1) *In general.* (i) Except as provided in subparagraph (2) of this paragraph, a taxpayer may make an election under any section referred to in paragraph (a) (1) or (2) of this section for the first taxable year for which the election is required to be made or for the taxable year selected by the taxpayer when the choice of a taxable

year is optional. The election must be made not later than (a) the time, including extensions thereof, prescribed by law for filing the income tax return for such taxable year or (b) 90 days after the date on which the regulations in this section are filed with the Office of the Federal Register, whichever is later.