

§ 5c.44F-1

- party other than the ultimate user of the property. [Reserved]
- 5c.168(f)(8)-10 Leases between related parties. [Reserved]
- 5c.168(f)(8)-11 Consolidated returns. [Reserved]
- 5c.442-1 Temporary regulations relating to change of annual accounting period.
- 5c.1305-1 Special income averaging rules for taxpayers otherwise required to compute tax in accordance with § 5c.1256-3.

AUTHORITY: 26 U.S.C. 168(f)(8)(G) and 7805.

SOURCE: T.D. 7791, 46 FR 51907, Oct. 23, 1981, unless otherwise noted.

§ 5c.44F-1 Leases and qualified research expenses.

For purposes of section 44F(b)(2)(A)(iii), the determination of whether any amount is paid or incurred to another person for the right to use personal property in the conduct of qualified research shall be made without regard to the characterization of the transaction as a lease under section 168(f)(8). See § 5c.168(f)(8)-1(b).

§ 5c.103-1 Leases and capital expenditures.

For purposes of section 103(b)(6)(D) and § 1.103-10(b)(2)(iv)(b), the determination of whether property is leased and whether property is of a type that is ordinarily subject to a lease shall be made without regard to the characterization of the transaction as a lease under section 168(f)(8).

§ 5c.103-2 Leases and industrial development bonds.

For purposes of section 103(b)(2), the determination of whether an obligation constitutes an industrial development bond shall be made without regard to the characterization of the transaction as a lease under section 168(f)(8).

[T.D. 7800, 46 FR 63257, Dec. 31, 1981]

§ 5c.103-3 Leases and arbitrage.

In the case of a sale and leaseback transaction qualifying under section 168(f)(8), where the lessee's rental payments are substantially equal in timing and amount to the principal and interest payments on the lessor's note, the arbitrage provisions of section 103(c) and §§ 1.103-13, 1.103-14, and 1.103-15 shall apply to any obligations of the lessee (or party related to the lessee)

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without regard to the section 168(f)(8) lease transaction.

[T.D. 7800, 46 FR 63257, Dec. 31, 1981]

§ 5c.168(f)(8)-1 Special rules for leases.

(a) *In general.* Section 168(f)(8) of the Internal Revenue Code of 1954 provides special rules for characterizing certain agreements as leases and characterizing the parties to the agreement as lessors and lessees for Federal tax law purposes. These rules apply only with respect to qualified leased property. If all the requirements of section 168(f)(8) and §§ 5c.168(f)(8)-2 through 5c.168(f)(8)-11 are met, then the agreement shall be treated as a lease, and the party characterized as the lessor shall be treated as the owner of the property. In such case, the lessor shall be deemed to have entered into the lease in the course of carrying on a trade or business and shall be allowed accelerated cost recovery system (ACRS) deductions under section 168 and the investment tax credit under section 38 with respect to the leased property.

(b) *Exception for qualified research expenditures.* For purposes of section 44F(b)(2)(A)(iii), the determination of whether any amount is paid or incurred to another person for the right to use personal property in the conduct of qualified research shall be made without regard to the characterization of the transaction as a lease under section 168(f)(8). Thus, if a lessee would be considered the owner of the property without regard to section 168(f)(8), any amounts paid by the lessee under the lease shall not be considered amounts paid or incurred for the right to use the property.

(c) *Other factors disregarded.* If an agreement meets the requirements of section 168(f)(8) and §§ 5c.168(f)(8)-2 through 5c.168(f)(8)-11, the following factors will not be taken into account in determining whether the transaction is a lease:

(1) Whether the lessor or lessee must take the tax benefits into account in order to determine that a profit is made from the transaction;

(2) The fact that the lessee is the nominal owner of the property for State or local law purposes (*e.g.*, has legal title to the property) and retains the burdens, benefits, and incidents of