

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 extensions thereof) for filing the return for the taxable year of election. The notification of amendment or revocation of an election shall be made by filing an amended tax return with the Internal Revenue Service Center with which the election was filed. The election should be filed in the manner specified in the Class Life Asset Depreciation Range System (ADR) regulations as finally prescribed.

(d) *Examples.* The principles of this section may be illustrated by the following examples:

*Example (1).* Taxpayer A filed an election under § 1.167(a)-11 before February 1, 1972. A elected to use the modified half-year convention by treating all assets as placed in service on the first day of the second quarter of the taxable year, excluded section 1250 property (as defined in section 1250(c)) and property used predominantly outside the United

States from the election, and included “subsidiary assets” (as defined in §1.167(a)-11(b)(5)(vii) of the proposed amendments to the regulations) in the election. A’s election does not conform with the regulations under §1.167(a)-11 as proposed to be amended. A should file an amended return and election within 120 days after the publication of the final Class Life Asset Depreciation Range System (ADR) regulations under §1.167(a)-11. Such amended return and election must conform to the final amendments to the regulations. In the amended election, A must adopt one of the conventions permitted by the final amendments. Assuming the proposed amendments are finally adopted, A may exclude his subsidiary assets from the election provided the conditions of paragraph (b)(5)(vii) of §1.167(a)-11 of the regulations, as proposed to be amended, are met, and A must include property used predominantly outside the United States in the election unless paragraph (b)(5)(iii), (v), or (vi) of §1.167(a)-11, as proposed to be amended, permit the exclusion of the property. Generally, A must include section 1250 property in the election unless paragraph (b)(5)(vi) of §1.167(a)-11, as proposed to be amended, permits the exclusion of the property.

*Example (2).* Taxpayer B filed an election to compute depreciation under §1.167(a)-11 before February 1, 1972. B elected to use the half-year convention and has no assets used predominantly outside the United States. B excluded section 1250 property from the election and included his subsidiary assets in the election. Assume that the provisions of paragraph (b)(5)(vi) of §1.167(a)-11, as proposed to be amended, apply and permit the exclusion of section 1250 property and that B does not elect to exclude subsidiary assets pursuant to paragraph (b)(5)(vii), as proposed to be amended. B has no assets which were excluded from the election under paragraph (b)(5)(v) of §1.167(a)-11, as proposed to be amended. The election which was filed before February 1, 1972, will be treated as a valid election under the Class Life Asset Depreciation Range System (ADR) as contained in the final amendments to the regulations, if it conforms with those amendments. B need not file an amended election provided his election conforms to the final regulations under §1.167(a)-11. However, B may file an amended election within 120 days after the final regulations under §1.167(a)-11 are published in the FEDERAL REGISTER in order to include section 1250 property, or to exclude subsidiary assets, or to make other changes, or to revoke the election.

[T.D. 7159, 37 FR 1469, Jan. 29, 1972]

### § 12.7 Election to be treated as a DISC.

(a) *Manner and time of election—(1) Manner—(i) In general.* A corporation

can elect to be treated as a DISC under section 992(b) for a taxable year beginning after December 31, 1971. Except as provided in subdivision (ii) of this subparagraph, the election is made by the corporation filing Form 4876 with the service center with which it would file its income tax return if it were subject for such taxable year to all the taxes imposed by subtitle A of the Internal Revenue Code of 1954, and a copy of the completed Form 4876 with the Commissioner of Internal Revenue (attention: ACTS:A:AO), Washington, D.C. 20224. The form shall be signed by any person authorized to sign a corporation return under section 6062, and shall contain the information required by such form. Except as provided in paragraphs (b)(3) and (c) of this section, such election to be treated as a DISC shall be valid only if the consent of every person who is a shareholder of the corporation as of the beginning of the first taxable year for which such election is effective is on or attached to such Form 4876 when filed with the service center.

(ii) *Transitional rule for corporations electing during 1972.* If the first taxable year for which an election by a corporation to be treated as a DISC is a taxable year beginning after December 31, 1971, and on or before December 31, 1972, such election may be made either in the manner prescribed in subdivision (i) of this subparagraph or by filing, at the place prescribed in subdivision (i) of this subparagraph, a statement captioned “Election to be Treated as a DISC”. Such statement of election shall be valid only if the consent of each shareholder is filed with the service center in the form, and at the time, prescribed in paragraph (b) of this section. Such statement shall be signed by any person authorized to sign a corporation return under section 6062 and shall include the name, address, and employer identification number (if known) of the corporation, the beginning date of the first taxable year for which the election is effective, the number of shares of stock of the corporation issued and outstanding as of the earlier of the beginning of the first taxable year for which the election is effective or the time the statement is filed, the number of shares held by each shareholder as of the earlier of