

§ 301.9100-18T

26 CFR Ch. I (4-1-10 Edition)

this subparagraph shall be made by filing a statement to that effect with the district director, or the director of the regional service center, with whom the election was filed.

(2) *Termination without consent.* An election which is made in accordance with paragraph (b)(1) of this section under a section referred to in paragraph (a)(2) of this section and is not revoked pursuant to subparagraph (1) of this paragraph may, without the consent of the Commissioner, be terminated at any time after making the election by filing a statement to that effect with the district director, or the director of the regional service center, with whom the election was filed. This statement giving notice of termination must be filed before the beginning of the month specified in the statement for which the termination is to be effective. If pursuant to this subparagraph the taxpayer terminates an election made under any such section, he may not thereafter make a new election under that section with respect to the facility, property, or equipment to which the termination relates.

(d) *Furnishing of supplementary information required.* If the permanent regulations which are issued under the section of the Code or Act referred to in paragraph (a) (1) or (2) of this section to which the election relates require the furnishing of information in addition to that which was furnished with the statement of election filed pursuant to paragraph (b)(1) of this section, the taxpayer must furnish such additional information in a statement addressed to the district director, or the director of the regional service center, with whom the election was filed. This statement must clearly identify the election and the taxable year for which it was made.

(e) *Other elections.* Elections under the following sections of the Code may not be made pursuant to paragraph (b)(1) of this section but are to be made under regulations, whether temporary or permanent, which will be issued under amendments made by the Act. If necessary, such regulations will provide a reasonable period of time within which taxpayers will be permitted to make elections under these sections for taxable years ending before the date on

which such regulations are filed with the Office of the Federal Register:

| Section             | Description  |
|---------------------|--|
| 167(k)(1) .....     | Expenditures to rehabilitate low-income rental housing.  |
| 167(l)(4) .....     | Post-1969 property of certain utilities representing growth in capacity.   |
| 170(b)(1)(D)(iii)   | Special limitation with respect to contributions of certain capital gain property.   |
| 453(c) .....        | Revocation of election to report income on installment basis.  |
| 507(b)(1)(B)(ii) .. | Notice of termination of private foundation status.  |
| 1564(a)(2) .....    | Allowance of certain amounts to component member of controlled group of corporations.  |
| 4942(h)(2) .....    | Deficient distributions of private foundations for prior taxable years.  |
| 4943(c)(4)(E) ....  | Determination of holdings of a private foundation in a business enterprise where substantial contributors hold more than 15 percent of voting stock. |

(f) *Cross reference.* For temporary regulations under sections 57(c) and 163(d)(7) of the code, relating to elections with respect to net leases of real property, see §12.8 of the regulations in this part (Temporary Income Tax Regulations Under the Revenue Act of 1971).

(83 Stat. 487, 85 Stat. 522, 523; 26 U.S.C. 1 nt., 57(c)(4), 163(d)(7))

[T.D. 7032, 35 FR 4330, Mar. 11, 1970]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §301.9100-17T, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

**§ 301.9100-18T Election to include in gross income in year of transfer.**

(a) *In general.* Under section 83(b) of the Internal Revenue Code of 1954 any person who performs services in connection with which property is transferred which at the time of transfer is not transferable by the transferee and is subject to a substantial risk of forfeiture may elect to include in his gross income for the taxable year in which such property is transferred, the excess of the fair market value of such property at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse) over the amount (if any) paid for such property. If this election is made section 33(a) does not apply with respect to such property, and any subsequent appreciation in the value of the property is not

taxable as compensation. However, if the property is later forfeited, no deduction is allowed to any person with respect to such forfeiture. This election is not necessary in the case of property which is transferred subject only to a restriction which by its terms will never lapse.

(b) *Manner of making election.* The election referred to in paragraph (a) of this section is made by filing two copies of a written statement with the internal revenue officer with whom the person who performed the services files his return.

(c) *Additional copies.* The person who performed the services shall also submit a copy of the statement referred to in paragraph (b) of this section to the person for whom the services are performed, and, in addition, if the person who performs the services in connection with which restricted property is transferred and the transferee of such property are not the same person, the person who performs the services shall submit a copy of such statement to the transferee of the property.

(d) *Content of statement.* The statement shall indicate that it is being made under section 83(b) of the Code, and shall contain the following information:

(1) The name, address, taxpayer identification number and the taxable year (For example, "Calendar year 1969" or "Fiscal year ending May 31, 1970") of the person who performed the services;

(2) A description of each property with respect to which the election is being made;

(3) The date or dates on which the property is transferred;

(4) The nature of the restriction or restrictions to which the property is subject;

(5) The fair market value at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse) of each property with respect to which the election is being made; and

(6) The amount (if any) paid for such property.

(e) *Time for making election.* The statement referred to in paragraph (b) of this section shall be filed not later than 30 days after the date the property was transferred (or, if later, Janu-

ary 29, 1970). Any statement filed before February 15, 1970, may be amended not later than 30 days after the publication of this Treasury decision in the FEDERAL REGISTER in order to make it conform to the requirements of paragraph (d) of this section (January 17, 1970).

(f) *Revocability of election.* An election under section 83(b) may not be revoked except with the consent of the Commissioner.

[T.D. 7021, 35 FR 626, Jan. 17, 1970; 35 FR 889, Jan. 22, 1970. Redesignated by T.D. 8435, 57 FR 43895, Sept. 23, 1992]

**§ 301.9100-19T Election relating to passive investment income of electing small business corporations.**

(a) *In general.* Section 3(a) of the Act of April 14, 1966 (Pub. L. 89-389) amends section 1372(e)(5) of the Internal Revenue Code of 1954 (relating to passive investment income of electing small business corporations). This amendment, which applies to taxable years of electing small business corporations ending after April 14, 1966, provides, in general, that an election of a small business corporation under section 1372(a) of the Code shall not terminate for a taxable year of the corporation in which it has gross receipts more than 20 percent of which is passive investment income, if—

(1) Such taxable year is the first taxable year in which the corporation commenced the active conduct of any trade or business or the next succeeding taxable year; and

(2) The amount of passive investment income for such taxable year is less than \$3,000.

Section 3(b) of the Act of April 14, 1966, provides that the amendment made by section 3(a) thereof shall also apply to taxable years of a corporation beginning after December 31, 1962, and ending before April 15, 1966, if the corporation elects to have the amendment apply to such years, and all persons (or their personal representatives) who were shareholders of such corporation at any time during any of such years consent to such election and the application of the amendment. This section prescribes the time for, and manner of, making such election and consents, and also extends the time within which