

annual fiscal period, other than a period in the fiscal year within which the registration statement became effective, or, for offerings conducted pursuant to § 230.415(a)(1)(vii) or § 230.415(a)(1)(x), the takedown for the offering occurred, there are no asset-backed securities of such class that were sold in a registered transaction held by non-affiliates of the depositor and a certification on Form 15 (17 CFR 249.323) has been filed; or

(2) When there are no asset-backed securities of such class that were sold in a registered transaction still

outstanding, immediately upon filing with the Commission a certification on Form 15 (17 CFR 249.323) if the issuer of such class has filed all reports required by Section 13(a), without regard to Rule 12b-25 (17 CFR 249.322), for the shorter of its most recent three fiscal years and the portion of the current year preceding the date of filing Form 15, or the period since the issuer became subject to such reporting obligation. If the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days, file with the Commission all reports which would have been required if such certification had not been filed.

**Note 1 to Paragraph (b):** Securities held of record by a broker, dealer, bank or nominee for any of them for the accounts of customers shall be considered as held by the separate accounts for which the securities are held.

**Note 2 to Paragraph (b):** An issuer may not suspend reporting if the issuer and its affiliates acquire and resell securities as part of a plan or scheme to evade the reporting obligations of Section 15(d).

(c) This section does not affect any other reporting obligation applicable with respect to any classes of securities from additional takedowns under the same or different registration statements or any reporting obligation that may be applicable pursuant to section 12 of the Act (15 U.S.C. 78l).

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The authority citation for part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

■ 6. Amend Form 15 (referenced in § 249.323) by:

- a. Adding a checkbox referring to “Rule 15d-22(b)” after the checkbox referring to “Rule 15d-6”; and
- b. By revising the first sentence of the Instruction to read: “This form is required by Rules 12g-4, 12h-3, 15d-6 and 15d-22 of the General Rules and

Regulations under the Securities Exchange Act of 1934.”

**Note:** The text of Form 15 does not and this amendment will not appear in the Code of Federal Regulations.

By the Commission.

Dated: August 17, 2011.

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2011-21500 Filed 8-22-11; 8:45 am]

**BILLING CODE 8011-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1 and 602

[TD 9547]

RIN 1545-BF05

#### Election To Expense Certain Refineries

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document provides final regulations relating to the election to expense qualified refinery property under section 179C of the Internal Revenue Code (Code). These final regulations adopt the temporary regulations with certain modifications to reflect changes to the law made by the Energy Improvement and Extension Act of 2008.

**DATES:** *Effective Date:* These regulations are effective August 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Philip Tiegerman (202) 622-3110 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number (1545-2103). Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## Background

Section 179C was added to the Code by section 1323(a) of the Energy Policy Act of 2005, Public Law 109-58 (119 Stat. 594), to encourage the construction of new refineries and the expansion of existing refineries to enhance the nation's refinery capacity. Section 179C(a) allows a taxpayer to elect to deduct as an expense 50 percent of the cost of any qualified refinery property. The remaining 50 percent of the taxpayer's qualifying expenditures generally are recovered under section 168 and section 179B, if applicable. All costs properly capitalized into qualified refinery property are includable in the cost of the qualified refinery property.

As originally enacted, section 179C(c)(1)(B) required that qualified refinery property be placed in service by a taxpayer after August 8, 2005, and before January 1, 2012. Under section 179C(c)(1)(F) as originally enacted, (i) the construction of the property must have been subject to a written binding construction contract entered into before January 1, 2008, (ii) the property must have been placed in service before January 1, 2008, or (iii) in the case of self-constructed property, the construction of the property must have begun after June 14, 2005, and before January 1, 2008. Section 179C(d)(1) originally required that a qualified refinery be designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels (as defined in section 45K(c)). Under section 179C(e) as originally enacted, qualified refinery property must have enabled the existing qualified refinery to increase total volume output (determined without regard to asphalt or lube oil) by 5 percent or more on an average daily basis or to process qualified fuels (as defined in section 45K(c)) at a rate that is equal to or greater than 25 percent of the total throughput of the qualified refinery on an average daily basis.

Section 209 of the Energy Improvement and Extension Act of 2008 (the “2008 Act”), Division B, Public Law 110-343 (122 Stat. 3765), amended section 179C in several respects. The 2008 Act extended the placed in service date of section 179C(c)(1)(B) to January 1, 2014. In addition, the 2008 Act amended section 179C(c)(1)(F) to provide that (i) the construction of the property must be subject to a written binding construction contract entered into before January 1, 2010, (ii) the property must be placed in service before January 1, 2010, or (iii) in the case of self-constructed property, the construction of the property must begin

after June 14, 2005, and before January 1, 2010.

Effective for property placed in service after October 3, 2008, the 2008 Act amended the definition of "qualified refinery" under section 179C(d)(1) to include a refinery that is designed to serve the primary purpose of processing liquid fuel directly from shale or tar sands, and expanded the production capacity requirement of section 179C(e)(2) to include property that enables the existing qualified refinery to process shale or tar sands.

On July 9, 2008, the Treasury Department and the IRS published in the **Federal Register** temporary regulations (TD 9412), 73 FR 39230, and a notice of proposed rulemaking (REG-146895-05), 73 FR 39270, by cross-reference to temporary regulations. A public hearing was scheduled for November 20, 2008. The public hearing was cancelled on November 6, 2008 (73 FR 66001) because no written comments or requests to speak were received.

The temporary regulations and proposed regulations are hereby removed and the final regulations adopt the rules of the temporary and proposed regulations with certain revisions, described below, to reflect amendments to the statute made by the 2008 Act.

### Explanation of Provisions

#### *Placed in Service and Construction and Written Binding Contract Requirements*

Section 1.179C-1T(b)(4) and § 1.179C-1T(b)(7)(i)(A) of the temporary regulations required that qualified refinery property be placed in service by the taxpayer after August 8, 2005, and before January 1, 2012. Section 1.179C-1(b)(4) and § 1.179C-1(b)(7)(i)(A) of the final regulations provide that the property must be placed in service after August 8, 2005, and before January 1, 2014.

Section 1.179C-1T(b)(7)(iii) of the temporary regulations provided that the manufacture, construction, or production of self-constructed property must begin before January 1, 2008. Under § 1.179C-1(b)(7)(iii) of the final regulations, the manufacture, construction, or production of self-constructed property must begin before January 1, 2010.

Under § 1.179C-1T(b)(7)(iii)(C) of the temporary regulations, a component of self-constructed property had to be acquired or self-constructed before January 1, 2008, in order to qualify as qualified refinery property. Section 1.179C-1(b)(7)(iii)(C) of the final regulations provides that the component must be acquired or self-constructed before January 1, 2010.

#### *Qualified Refinery Property*

Section 1.179C-1T(b)(2)(i) of the temporary regulations provided that a qualified refinery is any refinery located in the United States that is designed to serve the primary purpose of processing crude oil or qualified fuels. The final regulations add new § 1.179C-1(b)(2)(i)(A) and new § 1.179C-1(b)(2)(i)(B). Section 1.179C-1(b)(2)(i)(A) of the final regulations provides that in the case of property placed in service after August 8, 2005, and on or before October 3, 2008, a qualified refinery is any refinery located in the United States that is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels. Section 1.179C-1(b)(2)(i)(B) of the final regulations provides that, in the case of property placed in service after October 3, 2008, and before January 1, 2014, a qualified refinery is any refinery located in the United States that is designed to serve the primary purpose of processing liquid fuel from crude oil, qualified fuels, or directly from shale or tar sands.

#### *Production Capacity*

Section 1.179C-1T(b)(5)(i) of the temporary regulations generally provided that refinery property is considered to be qualified refinery property if (A) it enables the existing qualified refinery to increase the total volume output by at least 5 percent on an average daily basis; or (B) it enables the existing qualified refinery to increase the percentage of total throughput attributable to processing qualified fuels to a rate that is at least 25 percent of the total throughput on an average daily basis. The final regulations, in § 1.179C-1(b)(5)(i), modify this definition to provide generally that refinery property is considered to be qualified refinery property if (A) it enables the existing qualified refinery to increase the total volume output by at least 5 percent on an average daily basis; (B) in the case of property placed in service after August 8, 2005, and on or before October 3, 2008, it enables the existing qualified refinery to increase the percentage of total throughput attributable to processing qualified fuels to a rate that is at least 25 percent of the total throughput on an average daily basis; or (C) in the case of property placed in service after October 3, 2008, and before January 1, 2014, it enables the existing qualified refinery to increase the percentage of total throughput attributable to processing shale, tar sands, or qualified fuels to a rate that is

at least 25 percent of total throughput on an average daily basis.

#### *Effective/Applicability Date*

This section is applicable for taxable years ending on or after August 22, 2011. For taxable years ending before August 22, 2011, taxpayers may apply the proposed regulations published on July 9, 2008, or, in the alternative, may apply these final regulations.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866 as supplemented by Executive Order 13563. The collections of information in § 1.179-1(d)(2), (e)(2), and (f) are required by section 179C(b), (g), and (h), respectively, and, therefore, are not imposed by these regulations. Accordingly, they are not subject to the Regulatory Flexibility Act. Only the collection of information in § 1.179-1(d)(3), regarding the revocation of an election under section 179C(a), is imposed by these regulations. It is hereby certified that the collection of information contained in § 1.179-1(d)(3) of the regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that although most of the 12 taxpayers who potentially could or would make an election under section 179C(a) will be small entities, it is expected that few, if any, of those 12 taxpayers once having made the election will choose to revoke it. Therefore, the collection of information will not affect a substantial number of small entities. The information required to revoke an election under section 179C(a) consists entirely of a portion of the information required to make the election. Consequently, the economic burden for those taxpayers who choose to revoke the election is minimal in nature and the regulations do not impose any burden in addition to the burden associated with making the election. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 6) does not apply to these regulations.

#### Drafting Information

The principal author of these regulations is Philip Tiegerman, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects****26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**26 CFR Part 602**

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly 26, CFR parts 1 and 602 are amended as follows:

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.179C-1 is added to read as follows:

**§ 1.179C-1 Election to expense certain refineries.**

(a) *Scope and definitions*—(1) *Scope.* This section provides the rules for determining the deduction allowable under section 179C(a) for the cost of any qualified refinery property. The provisions of this section apply only to a taxpayer that elects to apply section 179C in the manner prescribed under paragraph (d) of this section.

(2) *Definitions.* For purposes of section 179C and this section, the following definitions apply:

(i) *Applicable environmental laws* are any applicable federal, state, or local environmental laws.

(ii) *Qualified fuels* has the meaning set forth in section 45K(c).

(iii) *Cost* is the unadjusted depreciable basis (as defined in § 1.168(b)-1(a)(3), but without regard to the reduction in basis for any portion of the basis the taxpayer properly elects to treat as an expense under section 179C and this section) of the property.

(iv) *Throughput* is a volumetric rate measuring the flow of crude oil, qualified fuels, or, in the case of property placed in service after October 3, 2008, and before January 1, 2014, shale or tar sands, processed over a given period of time, typically referenced on the basis of barrels per calendar day.

(v) *Barrels per calendar day* is the amount of fuels that a facility can process under usual operating conditions, expressed in terms of capacity during a 24-hour period and reduced to account for down time and other limitations.

(vi) *United States* has the same meaning as that term is defined in section 7701(a)(9).

(b) *Qualified refinery property*—(1) *In general.* Qualified refinery property is any property that meets the requirements set forth in paragraphs (b)(2) through (b)(7) of this section.

(2) *Description of qualified refinery property*—(i) *In general.* Property that comprises any portion of a qualified refinery may be qualified refinery property. For purposes of section 179C and this section, a qualified refinery is any refinery located in the United States that—

(A) In the case of property placed in service after August 8, 2005, and on or before October 3, 2008, is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels; or

(B) In the case of property placed in service after October 3, 2008, and before January 1, 2014, is designed to serve the primary purpose of processing liquid fuel from crude oil, qualified fuels, or directly from shale or tar sands.

(ii) *Nonqualified refinery property.* Refinery property is not qualified refinery property for purposes of this paragraph (b)(2) if—

(A) The primary purpose of the refinery property is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility; or

(B) The refinery property is built solely to comply with consent decrees or projects mandated by Federal, State, or local governments.

(3) *Original use*—(i) *In general.* For purposes of the deduction allowable under section 179C(a), refinery property will meet the requirements of this paragraph (b)(3) if the original use of the property commences with the taxpayer. Except as provided in paragraph (b)(3)(ii) of this section, original use means the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. Thus, if a taxpayer incurs capital expenditures to recondition or rebuild property acquired or owned by the taxpayer, only the capital expenditures incurred by the taxpayer to recondition or rebuild the property acquired or owned by the taxpayer satisfy the original use requirement. However, the cost of reconditioned or rebuilt property acquired by a taxpayer does not satisfy the original use requirement. Whether property is reconditioned or rebuilt property is a question of fact. For purposes of this paragraph (b)(3)(i), acquired or self-constructed property that contains used parts will be treated as reconditioned or rebuilt only if the cost of the used parts is more than 20 percent of the total cost of the property.

(ii) *Sale-leaseback.* If any new portion of a qualified refinery is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the taxpayer-lessee is considered the original user of the property.

(4) *Placed-in-service date*—(i) *In general.* Refinery property will meet the requirements of this paragraph (b)(4) if the property is placed in service by the taxpayer after August 8, 2005, and before January 1, 2014.

(ii) *Sale-leaseback.* If a new portion of refinery property is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the property is treated as originally placed in service by the taxpayer-lessee not earlier than the date on which the property is used by the lessee under the leaseback.

(5) *Production capacity*—(i) *In general.* Refinery property is considered qualified refinery property if—

(A) It enables the existing qualified refinery to increase the total volume output, determined without regard to asphalt or lube oil, by at least 5 percent on an average daily basis;

(B) In the case of property placed in service after August 8, 2005, and on or before October 3, 2008, it enables the existing qualified refinery to increase the percentage of total throughput attributable to processing qualified fuels to a rate that is at least 25 percent of total throughput on an average daily basis; or

(C) In the case of property placed in service after October 3, 2008, and before January 1, 2014, it enables the existing qualified refinery to increase the percentage of total throughput attributable to processing qualified fuels, shale, or tar sands to a rate that is at least 25 percent of total throughput on an average daily basis.

(ii) *When production capacity is tested.* The production capacity requirement of this paragraph (b)(5) is determined as of the date the property is placed in service by the taxpayer. Any reasonable method may be used to determine the appropriate baseline for measuring capacity increases and to demonstrate and substantiate that the capacity of the existing qualified refinery has been sufficiently increased.

(iii) *Multi-stage projects.* In the case of multi-stage projects, a taxpayer must satisfy the reporting requirements of paragraph (f)(2) of this section,

sufficient to establish that the production capacity requirements of this paragraph (b)(5) will be met as a result of the taxpayer's overall plan.

(6) *Applicable environmental laws*—

(i) *In general.* The environmental compliance requirement applies only with respect to refinery property, or any portion of refinery property, that is placed in service after August 8, 2005. A refinery's failure to meet applicable environmental laws with respect to a portion of the refinery that was in service prior to August 8, 2005 will not disqualify a taxpayer from making the election under section 179C(a) with respect to otherwise qualifying refinery property.

(ii) *Waiver under the Clean Air Act.* Refinery property must comply with the Clean Air Act, notwithstanding any waiver received by the taxpayer under that Act.

(7) *Construction of property*—(i) *In general.* Qualified property will meet the requirements of this paragraph (b)(7) if no written binding contract for the construction of the property was in effect before June 14, 2005, and if—

(A) The construction of the property is subject to a written binding contract entered into before January 1, 2010;

(B) The property is placed in service before January 1, 2010; or

(C) In the case of self-constructed property, the construction of the property began after June 14, 2005, and before January 1, 2010.

(ii) *Definition of binding contract*—(A) *In general.* A contract is binding only if it is enforceable under state law against the taxpayer or a predecessor, and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, a contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages to a specified amount. In determining whether a contract limits damages, the fact that there may be little or no damages because the contract price does not significantly differ from fair market value will not be taken into account.

(B) *Conditions.* A contract is binding even if subject to a condition, as long as the condition is not within the control of either party or the predecessor of either party. A contract will continue to be binding if the parties make insubstantial changes in its terms and conditions, or if any term is to be determined by a standard beyond the control of either party. A contract that imposes significant obligations on the taxpayer or a predecessor will be treated as binding, notwithstanding the fact that

insubstantial terms remain to be negotiated by the parties to the contract.

(C) *Options.* An option to either acquire or sell property is not a binding contract.

(D) *Supply agreements.* A binding contract does not include a supply or similar agreement if the payment amount and design specification of the property to be purchased have not been specified.

(E) *Components.* A binding contract to acquire one or more components of a larger property will not be treated as a binding contract to acquire the larger property. If a binding contract to acquire a component does not satisfy the requirements of this paragraph (b)(7), the component is not qualified refinery property.

(iii) *Self-constructed property*—(A) *In general.* Except as provided in paragraph (b)(7)(iii)(B) of this section, if a taxpayer manufactures, constructs, or produces property for use by the taxpayer in its trade or business (or for the production of income by the taxpayer), the construction of property rules in this paragraph (b)(7) are treated as met for qualified refinery property if the taxpayer begins manufacturing, constructing, or producing the property after June 14, 2005, and before January 1, 2010. Property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract (as defined in paragraph (b)(7)(ii) of this section) that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business (or for the production of income) is considered to be manufactured, constructed, or produced by the taxpayer.

(B) *When construction begins.* For purposes of this paragraph (b)(7)(iii), construction of property generally begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature begins depends on the facts and circumstances.

(C) *Components of self-constructed property*—(1) *Acquired components.* If a binding contract (as defined in paragraph (b)(7)(ii) of this section) to acquire a component of self-constructed property is in effect on or before June 14, 2005, the component does not satisfy the requirements of paragraph (b)(7)(i) of this section, and is not qualified refinery property. However, if construction of the self-constructed property begins after June 14, 2005, the self-constructed property may be

qualified refinery property if it meets all other requirements of section 179C and this section (including paragraph (b)(7)(i) of this section), even though the component is not qualified refinery property. If the construction of self-constructed property begins before June 14, 2005, neither the self-constructed property nor any component related to the self-constructed property is qualified refinery property. If the component is acquired before January 1, 2010, but the construction of the self-constructed property begins after December 31, 2009, the component may qualify as qualified refinery property even if the self-constructed property is not qualified refinery property.

(2) *Self-constructed components.* If the manufacture, construction, or production of a component fails to meet any of the requirements of paragraph (b)(7)(iii) of this section, the component is not qualified refinery property. However, if the manufacture, construction, or production of a component fails to meet any of the requirements provided in paragraph (b)(7)(iii) of this section, but the construction of the self-constructed property begins after June 14, 2005, the self-constructed property may qualify as qualified refinery property if it meets all other requirements of section 179C and this section (including paragraph (b)(7)(i) of this section). If the construction of the self-constructed property begins before June 14, 2005, neither the self-constructed property nor any components related to the self-constructed property are qualified refinery property. If the component was self-constructed before January 1, 2010, but the construction of the self-constructed property begins after December 31, 2009, the component may qualify as qualified refinery property, although the self-constructed property is not qualified refinery property.

(c) *Computation of expense deduction for qualified refinery property.* In general, the allowable deduction under paragraph (d) of this section for qualified refinery property is determined by multiplying by 50 percent the cost of the qualified refinery property paid or incurred by the taxpayer.

(d) *Election*—(1) *In general.* A taxpayer may make an election to deduct as an expense 50 percent of the cost of any qualified refinery property. A taxpayer making this election takes the 50 percent deduction for the taxable year in which the qualified refinery property is placed in service.

(2) *Time and manner for making election*—(i) *Time for making election.* An election specified in this paragraph

(d) generally must be made not later than the due date (including extensions) for filing the original Federal income tax return for the taxable year in which the qualified refinery property is placed in service by the taxpayer.

(ii) *Manner of making election.* The taxpayer makes an election under section 179C(a) and this paragraph (d) by entering the amount of the deduction at the appropriate place on the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service, and attaching a report as specified in paragraph (f) of this section to the taxpayer's timely filed original federal income tax return for the taxable year in which the qualified refinery property is placed in service.

(3) *Revocation of election—(i) In general.* An election made under section 179C(a) and this paragraph (d), and any specification contained in such election, may not be revoked except with the consent of the Commissioner of Internal Revenue.

(ii) *Revocation prior to the revocation deadline.* A taxpayer is deemed to have requested, and to have been granted, the consent of the Commissioner to revoke an election under section 179C(a) and this paragraph (d) if the taxpayer revokes the election before the revocation deadline. The revocation deadline is 24 months after the due date (including extensions) for filing the taxpayer's Federal income return for the taxable year for which the election applies. An election under section 179C(a) and this paragraph (d) is revoked by attaching a statement to an amended return for the taxable year for which the election applies. The statement must specify the name and address of the refinery for which the election applies and the amount deducted on the taxpayer's original Federal income tax return for the taxable year for which the election applies.

(iii) *Revocation after the revocation deadline.* An election under section 179C(a) and this paragraph (d) may not be revoked after the revocation deadline. The revocation deadline may not be extended under § 301.9100-1.

(iv) *Revocation by cooperative taxpayer.* A taxpayer that has made an election to allocate the section 179C deduction to cooperative owners under section 179C(g) and paragraph (e) of this section may not revoke its election under section 179C(a).

(e) *Election to allocate section 179C deduction to cooperative owners—(1) In general.* If a cooperative taxpayer makes an election under section 179C(g) and this paragraph (e), the cooperative

taxpayer may elect to allocate all, some, or none of the deduction allowable under section 179C(a) for that taxable year to the cooperative owner(s). This allocation is equal to the cooperative owner(s)' ratable share of the total amount allocated, determined on the basis of each cooperative owner's ownership interest in the cooperative taxpayer. For purposes of this section, a cooperative taxpayer is an organization to which part I of subchapter T applies, and in which another organization to which part I of subchapter T applies (cooperative owner) directly holds an ownership interest. No deduction shall be allowed under section 1382 for any amount allocated under this paragraph (e).

(2) *Time and manner for making election—(i) Time for making election.* A cooperative taxpayer must make the election under section 179C(g) and this paragraph (e) by the due date (including extensions) for filing the cooperative taxpayer's original Federal income tax return for the taxable year to which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies.

(ii) *Manner of making election.* An election under this paragraph (e) is made by attaching to the cooperative taxpayer's timely filed Federal income tax return for the taxable year (including extensions) to which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies a statement providing the following information:

(A) The name and taxpayer identification number of the cooperative taxpayer.

(B) The amount of the deduction allowable to the cooperative taxpayer for the taxable year to which the election under section 179C(a) and paragraph (d) of this section applies.

(C) The name and taxpayer identification number of each cooperative owner to which the cooperative taxpayer is allocating all or some of the deduction allowable.

(D) The amount of the allowable deduction that is allocated to each cooperative owner listed in paragraph (e)(2)(ii)(C) of this section.

(3) *Written notice to owners.* If any portion of the deduction allowable under section 179C(a) is allocated to a cooperative owner, the cooperative taxpayer must notify the cooperative owner of the amount of the deduction allocated to the cooperative owner in a written notice, and on Form 1099-PATR, "Taxable Distributions Received from Cooperatives." This notice must be provided on or before the due date (including extensions) of the

cooperative taxpayer's original federal income tax return for the taxable year for which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies.

(4) *Irrevocable election.* A section 179C(g) election, once made, is irrevocable.

(f) *Reporting requirement—(1) In general.* A taxpayer may not claim a deduction under section 179C(a) for any taxable year unless the taxpayer files a report with the Secretary containing information with respect to the operation of the taxpayer's refineries.

(2) *Information to be included in the report.* The taxpayer must specify—

(i) The name and address of the refinery;

(ii) Under which production capacity requirement under section 179C(e) and paragraph (b)(5)(i)(A), (B), and (C) of this section the taxpayer's qualified refinery qualifies;

(iii) Whether the refinery is qualified refinery property under section 179C(d) and paragraph (b)(2) of this section, sufficient to establish that the primary purpose of the refinery is to process liquid fuel from crude oil, qualified fuels, or directly from shale or tar sands.

(iv) The total cost basis of the qualified refinery property at issue for the taxpayer's current taxable year; and

(v) The depreciation treatment of the capitalized portion of the qualified refinery property.

(3) *Time and manner for submitting report—(i) Time for submitting report.* The taxpayer is required to submit the report specified in this paragraph (f) not later than the due date (including extensions) of the taxpayer's Federal income tax return for the taxable year in which the qualified refinery property is placed in service.

(ii) *Manner of submitting report.* The taxpayer must attach the report specified in this paragraph (f) to the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service.

(g) *Effective/applicability date.* This section is applicable for taxable years ending on or after August 22, 2011. For taxable years ending before August 22, 2011, taxpayers may apply the proposed regulations published on July 9, 2008, or, in the alternative, may apply these final regulations.

#### § 1.179C-1T [Removed]

■ **Par. 3.** Section 1.179C-1T is removed.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

■ **Par. 5.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

**§ 602.101 OMB control numbers.**

\* \* \* \* \*  
(b) \* \* \*

CFR part or section where identified and described	Current OMB Control No.
* * * * *	* * * * *
1.179C-1 .....	1545-2103
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Approved: August 9, 2011.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

**Emily S. McMahon,**

*(Acting) Assistant Secretary of the Treasury (Tax Policy).*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 301**

[TD 9543]

**RIN 1545-BA99**

**Timely Mailing Treated as Timely Filing**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains regulations amending a Treasury Regulation to provide guidance as to the only ways to establish prima facie evidence of delivery of documents that have a filing deadline prescribed by the internal revenue laws, absent direct proof of actual delivery. The regulations provide that the proper use of registered or certified mail, or a service of a private delivery service (PDS) designated under criteria established by the IRS, will constitute prima facie evidence of delivery. The regulations are necessary to provide greater certainty on this issue and to provide specific guidance. The regulations affect taxpayers who mail Federal tax documents to the Internal

Revenue Service or the United States Tax Court.

**DATES:** *Effective Date:* These regulations are effective on August 23, 2011.

*Applicability Date:* These regulations apply to any payment or document mailed and delivered in accordance with the requirements of this section in an envelope bearing a postmark dated after September 21, 2004.

**FOR FURTHER INFORMATION CONTACT:** Steven Karon, (202) 622- 4570 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1899. The collection of information in these final regulations is in § 301.7502-1. This information is required in order for taxpayers to be able to establish the postmark date and prima facie evidence of delivery when using certified or registered mail.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

**Background**

This document contains regulations amending 26 CFR part 301 under section 7502 of the Internal Revenue Code (Code). Section 7502(a) first appeared as part of the recodification of the Code in 1954. Section 7502(a) is commonly known as the timely mailing/timely filing rule. Section 301.7502-1 of the Procedure and Administration Regulations provides rules for taxpayers to follow to qualify for favorable treatment under section 7502. There is a conflict among the Federal circuit courts of appeal as to whether the provisions in section 7502 provide the exclusive means to establish prima facie evidence of delivery of a document to the IRS or the United States Tax Court. Specifically, courts have reached differing conclusions regarding whether a taxpayer may raise a presumption of delivery of Federal tax documents to the IRS and the United States Tax Court

only in situations in which the taxpayer uses registered or certified mail.

A notice of proposed rulemaking (REG-138176-02) was published in the **Federal Register** (69 FR 56377) on September 21, 2004. The proposed regulations clarified that, other than direct proof of actual delivery, the exclusive means to establish prima facie evidence of delivery of Federal tax documents to the IRS and the United States Tax Court is to prove the use of registered or certified mail. Under section 7502(f)(3), the IRS may extend to a service provided by a PDS a rule similar to the prima facie evidence of delivery rule applicable to certified and registered mail. Prior to the publication of the notice of proposed rulemaking, the IRS had not received any comments or suggestions for extending this rule, even though the IRS and the Treasury Department previously requested comments in a prior notice of proposed rulemaking under section 7502. See **Federal Register**, 64 FR 2606 (January 15, 1999). Because the IRS was clarifying what documentation it will accept as proof of delivery, additional comments were sought on this issue. Accordingly, in the notice of proposed rulemaking, the IRS and the Treasury Department encouraged the public to make comments regarding whether the prima facie evidence of delivery rule should be extended to a service provided by a PDS.

Eighteen written comments were received in response to the notice of proposed rulemaking. Three commenters requested a public hearing. A notice of public hearing on proposed rulemaking was published in the **Federal Register** (69 FR 68282) on November 24, 2004. A public hearing was held on January 11, 2005. Three commenters appeared at the public hearing and commented on the notice of proposed rulemaking.

All comments were considered and are available for public inspection upon request. After consideration of the written comments and the comments provided at the public hearing, the proposed regulations under section 7502 are adopted as revised by this Treasury Decision. The public comments, public hearing, and the revisions are discussed in this preamble.

**Summary of Comments and Explanation of Provisions**

Four commenters expressed concern that the proposed regulations limited the proof to satisfy the timely mailing/timely filing rule of section 7502(a) rather than the prima facie evidence of delivery rule of section 7502(c). These final regulations do not limit the use of