in section 6511 within which a claim for credit or refund may be filed.

(c) Revocation. An application for consent to revoke an election under section 194 shall be in writing and shall be addressed to the Commissioner of Internal Revenue, Washington, DC 20224. The application shall set forth the name and address of the taxpaver. state the taxable years for which the election was in effect, and state the reason for revoking the election. The application shall be signed by the taxpayer or a duly authorized representative of the taxpayer and shall be filed at least 90 days prior to the time prescribed by law (without regard to extensions thereof) for filing the income tax return for the first taxable year for which the election is to terminate. Ordinarily, the request for consent to revoke the election will not be granted if it appears from all the facts and circumstances that the only reason for the desired change is to obtain a tax advantage.

 $[\mathrm{T.D.}\ 7927,\ 48\ \mathrm{FR}\ 55851,\ \mathrm{Dec.}\ 16,\ 1983]$

§ 1.195-1 Election to amortize start-up expenditures.

(a) In general. Under section 195(b), a taxpayer may elect to amortize startup expenditures (as defined in section 195(c)(1)). A taxpayer who elects to amortize start-up expenditures must, at the time of the election, select an amortization period of not less than 60 months, beginning with the month in which the active trade or business begins. The election applies to all of the taxpayer's start-up expenditures with respect to the trade or business. The election to amortize start-up expenditures is irrevocable, and the amortization period selected by the taxpayer in making the election may not subsequently be changed.

(b) Time and manner of making election. The election to amortize start-up expenditures under section 195 shall be made by attaching a statement containing the information described in paragraph (c) of this section to the tax-payer's return. The statement must be filed no later than the date prescribed by law for filing the return (including any extensions of time) for the taxable year in which the active trade or business begins. The statement may be

filed with a return for any taxable year prior to the year in which the tax-payer's active trade or business begins, but no later than the date prescribed in the preceding sentence. Accordingly, an election under section 195 filed for any taxable year prior to the year in which the taxpayer's active trade or business begins (and pursuant to which the taxpayer commenced amortizing start-up expenditures in that prior year) will become effective in the month of the year in which the taxpayer's active trade or business begins.

(c) Information required. The statement shall set forth a description of the trade or business to which it relates with sufficient detail so that expenses relating to the trade or business can be identified properly for the taxable year in which the statement is filed and for all future taxable years to which it relates. The statement also shall include the number of months (not less than 60) over which the expenditures are to be amortized, and to the extent known at the time the statement is filed, a description of each start-up expenditure incurred (whether or not paid) and the month in which the active trade or business began (or was acquired). A revised statement may be filed to include any start-up expenditures not included in the taxpayer's original election statement, but the revised statement may not include any expenditures for which the taxpayer had previously taken a position on a return inconsistent with their treatment as start-up expenditures. The revised statement may be filed with a return filed after the return that contained the election.

(d) Effective date. This section applies to elections filed on or after December 17, 1998.

[T.D. 8797, 63 FR 69555, Dec. 17, 1998]

§1.197-0 Table of contents.

This section lists the headings that appear in §1.197-2.

§1.197–2 Amortization of Goodwill and Certain Other Intangibles

- (a) Overview.
- (1) In general.
- (2) Section 167(f) property.
- (3) Amounts otherwise deductible.
- (b) Section 197 intangibles; in general.

26 CFR Ch. I (4-1-02 Edition)

§ 1.197-0

- (1) Goodwill.
- (2) Going concern value.
- (3) Workforce in place.
- (4) Information base.
- (5) Know-how, etc.
- (6) Customer-based intangibles.
- (7) Supplier-based intangibles.
- (8) Licenses, permits, and other rights granted by governmental units.
- (9) Covenants not to compete and other similar arrangements.
- (10) Franchises, trademarks, and trade names.
- (11) Contracts for the use of, and term interests in, other section 197 intangibles.
 - (12) Other similar items.
 - (c) Section 197 intangibles; exceptions.
- (1) Interests in a corporation, partnership, trust, or estate.
- (2) Interests under certain financial contracts.
 - (3) Interests in land.
- (4) Certain computer software.
- (i) Publicly available.
- (ii) Not acquired as part of trade or business.
 - (iii) Other exceptions.
 - (iv) Computer software defined.
- (5) Certain interests in films, sound recordings, video tapes, books, or other similar property.
- (6) Certain rights to receive tangible property or services.
- (7) Certain interests in patents or copyrights.
- (8) Interests under leases of tangible property.
 - (i) Interest as a lessor.
 - (ii) Interest as a lessee.
 - (9) Interests under indebtedness.
 - (i) In general.
 - (ii) Exceptions.
 - (10) Professional sports franchises.
 - (11) Mortgage servicing rights.
 - (12) Certain transaction costs.
 - (13) Rights of fixed duration or amount.
 - (d) Amortizable section 197 intangibles.
 - (1) Definition.
 - (2) Exception for self-created intangibles.
 - (i) In general.
 - (ii) Created by the taxpayer.
 - (A) Defined.
- (B) Contracts for the use of intangibles.
- (C) Improvements and modifications.
- (iii) Exceptions.
- (3) Exception for property subject to antichurning rules.
 - (e) Purchase of a trade or business.
 - (1) Goodwill or going concern value.
 - (2) Franchise, trademark, or trade name.
 - (i) In general.
- (ii) Exceptions.
- (3) Acquisitions to be included.
- (4) Substantial portion.
- (5) Deemed asset purchases under section 338.
- (6) Mortgage servicing rights.

- (7) Computer software acquired for internal use.
- (f) Computation of amortization deduction.
- (1) In general.
- (2) Treatment of contingent amounts.
- (i) Amounts added to basis during 15-year period.
- (ii) Amounts becoming fixed after expiration of 15-year period.
 - (iii) Rules for including amounts in basis.
 - (3) Basis determinations for certain assets.
- (i) Covenants not to compete.(ii) Contracts for the use of section 197 in-
- tangibles; acquired as part of a trade or business.
 - (A) In general.
- (B) Know-how and certain information base
- (iii) Contracts for the use of section 197 intangibles; not acquired as part of a trade or business
 - (iv) Applicable rules.
- (A) Franchises, trademarks, and trade names.
- (B) Certain amounts treated as payable under a debt instrument.
 - (1) In general.
- (2) Rights granted by governmental units.
 (3) Treatment of other parties to transaction.
- (4) Basis determinations in certain transactions.
- (i) Certain renewal transactions.
- (ii) Transactions subject to section 338 or 1060.
 - (iii) Certain reinsurance transactions.
 - (g) Special rules.
 - (1) Treatment of certain dispositions.
 - (i) Loss disallowance rules.
 - (A) In general.
 - (B) Abandonment or worthlessness.
 - (C) Certain nonrecognition transfers.
 - (ii) Separately acquired property.
- (iii) Disposition of a covenant not to compete.
 - (iv) Taxpayers under common control.
 - (A) In general.
 - (B) Treatment of disallowed loss.
- (2) Treatment of certain nonrecognition and exchange transactions.
 - (i) Relationship to anti-churning rules.
- (ii) Treatment of nonrecognition and exchange transactions generally.
 - (A) Transfer disregarded.
 - (B) Application of general rule.
 - (C) Transactions covered.
- (iii) Certain exchanged-basis property.
- (iv) Transfers under section 708(b)(1).
- (A) In general.
- (B) Termination by sale or exchange of interest.
 - (C) Other terminations.
- (3) Increase in the basis of partnership property under section 732(b), 734(b), 743(b), or 732(d).
- (4) Section 704(c) allocations.

Internal Revenue Service, Treasury

- (i) Allocations where the intangible is amortizable by the contributor.
- (ii) Allocations where the intangible is not amortizable by the contributor.
- (5) Treatment of certain reinsurance transactions.
 - (i) In general.
- (ii) Determination of adjusted basis.
- (A) Acquisitions (other than under section 338) of specified insurance contracts.
 - (B) Insolvent ceding company
- (C) Other acquisitions. [Reserved]
- (6) Amounts paid or incurred for a franchise, trademark, or trade name.
- (7) Amounts properly taken into account in determining the cost of property that is not a section 197 intangible.
- (8) Treatment of amortizable section 197 intangibles as depreciable property.
- (h) Anti-churning rules.
- (1) Scope and purpose.
- (i) Scope.
- (ii) Purpose.
- (2) Treatment of section 197(f)(9) intangibles.
- (3) Amounts deductible under section 1253(d) or $\S 1.162-11$.
 - (4) Transition period.
 - (5) Exceptions.
 - (6) Related person.
 - (i) In general.
 - (ii) Time for testing relationships.
 - (iii) Certain relationships disregarded.
 - (iv) De minimis rule.
 - (A) In general.
- (B) Determination of beneficial ownership interest.
- (7) Special rules for entities that owned or used property at any time during the transition period and that are no longer in existence.
- (8) Special rules for section 338 deemed acquisitions.
 - (9) Gain-recognition exception.
 - (i) Applicability.
 - (ii) Effect of exception.
 - (iii) Time and manner of election.
 - (iv) Special rules for certain entities.
 - (v) Effect of nonconforming elections.(vi) Notification requirements.
 - (vii) Revocation.
 - (viii) Election Statement.
- (ix) Determination of highest marginal rate of tax and amount of other Federal income tax on gain.
 - (A) Marginal rate.
 - (1) Noncorporate taxpayers.
 - (2) Corporations and tax-exempt entities.
 - (B) Other Federal income tax on gain.
 - (x) Coordination with other provisions.
 - (A) In general.
 - (B) Section 1374.
- $\left(C\right)$ Procedural and administrative provisions.
- (D) Installment method.
- (xi) Special rules for persons not otherwise subject to Federal income tax.

- (10) Transactions subject to both antichurning and nonrecognition rules.
- (11) Avoidance purpose.
- (12) Additional partnership anti-churning rules
 - (i) In general.
 - (ii) Section 732(b) adjustments. [Reserved]
- (iii) Section 732(d) adjustments.
- (iv) Section 734(b) adjustments. [Reserved]
- (v) Section 743(b) adjustments.
- (vi) Partner is or becomes a user of partnership intangible.
 - (A) General rule.
- (B) Anti-churning partner.
- (C) Effect of retroactive elections.
- (vii) Section 704(c) elections.
- (A) Allocations where the intangible is amortizable by the contributor.
- (B) Allocations where the intangible is not amortizable by the contributor.
- (viii) Operating rule for transfers upon death.
 - (i) Reserved
 - (j) General anti-abuse rule.
 - (k) Examples.
- (1) Effective dates.
- (1) In general.
- (2) Application to pre-effective date acquisitions.
- (3) Application of regulation project REG– 209709-94 to pre-effective date acquisitions.
- (4) Change in method of accounting.
- (i) In general.
- (ii) Application to pre-effective date transactions.
- (iii) Automatic change procedures.
- [T.D. 8867, 65 FR 3826, Jan. 25, 2000]

§ 1.197-1T Certain elections for intangible property (temporary).

(a) In general. This section provides rules for making the two elections under section 13261 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). Paragraph (c) of this section provides rules for making the section 13261(g)(2) election (the retroactive election) to apply the intangibles provisions of OBRA '93 to property acquired after July 25, 1991, and on or before August 10, 1993 (the date of enactment of OBRA '93). Paragraph (d) of this section provides rules for making the section 13261(g)(3) election (binding contract election) to apply prior law to property acquired pursuant to a written binding contract in effect on August 10, 1993, and at all times thereafter before the date of acquisition. The provisions of this section apply only to property for which an election is made under paragraph (c) or (d) of this section.