

or similar properties. An amount referred to in paragraph (a) of this section is a capital expenditure that is taken into account through inclusion in inventory costs or a charge to capital accounts or basis no earlier than the taxable year during which the amount is incurred within the meaning of § 1.446-1(c)(1)(ii). See section 263A and the regulations thereunder for cost capitalization rules that apply to amounts referred to in paragraph (a) of this section with respect to the production of real and tangible personal property (as defined in § 1.263A-2(a)(2)), including films, sound recordings, video tapes, books, or similar properties.

(c) The provisions of paragraph (a) (1) of this section shall not apply to expenditures deductible under:

(1) Section 616 and §§ 1.616-1 through 1.616-3, relating to the development of mines or deposits,

(2) Section 174 and §§ 1.174-1 through 1.174-4, relating to research and experimentation,

(3) Section 175 and §§ 1.175-1 through 1.175-6, relating to soil and water conservation,

(4) Section 179 and §§ 1.179-1 through 1.179-5, relating to election to expense certain depreciable business assets,

(5) Section 180 and §§ 1.180-1 and 1.180-2, relating to expenditures by farmers for fertilizer, lime, etc., and

(6) Section 182 and §§ 1.182-1 through 1.182-6, relating to expenditures by farmers for clearing land.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6794, 30 FR 792, Jan. 26, 1965; T.D. 8121, 52 FR 414, Jan. 6, 1987; T.D. 8131, 52 FR 10084, Mar. 30, 1987; T.D. 8408, 57 FR 12419, Apr. 10, 1992; T.D. 8482, 58 FR 42207, Aug. 9, 1993]

#### § 1.263(a)-2 Examples of capital expenditures.

The following paragraphs of this section include examples of capital expenditures:

(a) The cost of acquisition, construction, or erection of buildings, machinery and equipment, furniture and fixtures, and similar property having a useful life substantially beyond the taxable year.

(b) Amounts expended for securing a copyright and plates, which remain the property of the person making the pay-

ments. See section 263A and the regulations thereunder for capitalization rules which apply to amounts expended in securing and producing a copyright and plates in connection with the production of property, including films, sound recordings, video tapes, books, or similar properties.

(c) The cost of defending or perfecting title to property.

(d) The amount expended for architect's services.

(e) Commissions paid in purchasing securities. Commissions paid in selling securities are an offset against the selling price, except that in the case of dealers in securities such commissions may be treated as an ordinary and necessary business expense.

(f) Amounts assessed and paid under an agreement between bondholders or shareholders of a corporation to be used in a reorganization of the corporation or voluntary contributions by shareholders to the capital of the corporation for any corporate purpose. Such amounts are capital investments and are not deductible. See section 118 and § 1.118-1.

(g) A holding company which guarantees dividends at a specified rate on the stock of a subsidiary corporation for the purpose of securing new capital for the subsidiary and increasing the value of its stockholdings in the subsidiary shall not deduct amounts paid in carrying out this guaranty in computing its taxable income, but such payments are capital expenditures to be added to the cost of its stock in the subsidiary.

(h) The cost of good will in connection with the acquisition of the assets of a going concern is a capital expenditure.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 8131, 52 FR 10084, Mar. 30, 1987]

#### § 1.263(a)-3 Election to deduct or capitalize certain expenditures.

(a) Under certain provisions of the Code, taxpayers may elect to treat capital expenditures as deductible expenses or as deferred expenses, or to treat deductible expenses as capital expenditures.

(b) The sections referred to in paragraph (a) of this section include:

**§ 1.263(a)-4**

**26 CFR Ch. I (4-1-04 Edition)**

- (1) Section 173 (circulation expenditures).
- (2) Section 174 (research and experimental expenditures).
- (3) Section 175 (soil and water conservation expenditures).
- (4) Section 177 (trademark and trade name expenditures).
- (5) Section 179 (election to expense certain depreciable business assets).
- (6) Section 180 (expenditures by farmers for fertilizer, lime, etc.).
- (7) Section 182 (expenditures by farmers for clearing land).
- (8) Section 248 (organizational expenditures of a corporation).
- (9) Section 266 (carrying charges).
- (10) Section 615 (exploration expenditures).
- (11) Section 616 (development expenditures).

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6794, 30 FR 792, Jan. 26, 1965; T.D. 8121, 52 FR 414, Jan. 6, 1987]

**§ 1.263(a)-4 Amounts paid to acquire or create intangibles.**

(a) *Overview.* This section provides rules for applying section 263(a) to amounts paid to acquire or create intangibles. Except to the extent provided in paragraph (d)(8) of this section, the rules provided by this section do not apply to amounts paid to acquire or create tangible assets. Paragraph (b) of this section provides a general principle of capitalization. Paragraphs (c) and (d) of this section identify intangibles for which capitalization is specifically required under the general principle. Paragraph (e) of this section provides rules for determining the extent to which taxpayers must capitalize transaction costs. Paragraph (f) of this section provides a 12-month rule intended to simplify the application of the general principle to certain payments that create benefits of a brief duration. Additional rules and examples relating to these provisions are provided in paragraphs (g) through (n) of this section. The applicability date of the rules in this section is provided in paragraph (o) of this section. Paragraph (p) of this section provides rules applicable to changes in methods of accounting made to comply with this section.

(b) *Capitalization with respect to intangibles—*(1) *In general.* Except as otherwise provided in this section, a taxpayer must capitalize—

- (i) An amount paid to acquire an intangible (see paragraph (c) of this section);
- (ii) An amount paid to create an intangible described in paragraph (d) of this section;
- (iii) An amount paid to create or enhance a separate and distinct intangible asset within the meaning of paragraph (b)(3) of this section;
- (iv) An amount paid to create or enhance a future benefit identified in published guidance in the FEDERAL REGISTER or in the Internal Revenue Bulletin (see §601.601(d)(2)(ii) of this chapter) as an intangible for which capitalization is required under this section; and
- (v) An amount paid to facilitate (within the meaning of paragraph (e)(1) of this section) an acquisition or creation of an intangible described in paragraph (b)(1)(i), (ii), (iii) or (iv) of this section.

(2) *Published guidance.* Any published guidance identifying a future benefit as an intangible for which capitalization is required under paragraph (b)(1)(iv) of this section applies only to amounts paid on or after the date of publication of the guidance.

(3) *Separate and distinct intangible asset—*(i) *Definition.* The term *separate and distinct intangible asset* means a property interest of ascertainable and measurable value in money's worth that is subject to protection under applicable State, Federal or foreign law and the possession and control of which is intrinsically capable of being sold, transferred or pledged (ignoring any restrictions imposed on assignability) separate and apart from a trade or business. In addition, for purposes of this section, a fund (or similar account) is treated as a separate and distinct intangible asset of the taxpayer if amounts in the fund (or account) may revert to the taxpayer. The determination of whether a payment creates a separate and distinct intangible asset is made based on all of the facts and circumstances existing during the taxable year in which the payment is made.

(ii) *Definition.* The term *separate and distinct intangible asset* means a property interest of ascertainable and measurable value in money's worth that is subject to protection under applicable State, Federal or foreign law and the possession and control of which is intrinsically capable of being sold, transferred or pledged (ignoring any restrictions imposed on assignability) separate and apart from a trade or business. In addition, for purposes of this section, a fund (or similar account) is treated as a separate and distinct intangible asset of the taxpayer if amounts in the fund (or account) may revert to the taxpayer. The determination of whether a payment creates a separate and distinct intangible asset is made based on all of the facts and circumstances existing during the taxable year in which the payment is made.