Department of the Treasury

**Internal Revenue Service**

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# Business Expenses

For use in preparing
**2005** Returns

## Contents





## Introduction

This publication discusses common business expenses and explains what is and is not deductible. The general rules for deducting business expenses are discussed in the opening chapter. The chapters that follow cover specific expenses and list other publications and forms you may need.

**Comments and suggestions.** We welcome your comments about this publication and your suggestions for future editions.

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## What's New for 2005

The following items highlight some changes in the tax law for 2005.

**2005 Presidentially declared disaster areas.** The information in this publication covers routine business situations. If your business has been affected by Hurricanes Katrina, Wilma, or Rita, see Publication 4492, Information for Taxpayers Affected by Hurricanes Katrina, Wilma, and Rita. Publication 4492 contains special business provisions found in the Katrina Emergency Tax Relief Act of 2005 and the Gulf Opportunity Zone Act of 2005.

**Meal expense deduction subject to "hours of service" limits.** For 2005, this deduction is 70% of the reimbursed meals your employees consumed while they were subject to the Department of Transportation's "hours of service" limits. See chapter 13.

**Increased section 179 deduction dollar limit.** The maximum section 179 deduction you can elect for property you purchased and placed in service beginning in 2005 has increased from $102,000 to $105,000. For more information, see Publication 946.

**Domestic production activities deduction.** You may be able to deduct up to 3% of your qualified production activities income from certain business activities. For more information, see Form 8903, Domestic Production Activities Deduction.

**Elective deferrals.** For 2005, the maximum amount of elective deferrals under a salary reduction agreement that could be contributed to a qualified plan increased to $14,000 ($18,000 if you were age 50 or older). For SIMPLE plans, the amount increased to $10,000 ($12,000 if you were age 50 or older). The maximum elective deferral amount is $17,000 for section 403(b) plans if you qualify for the 15-year rule. See chapter 3.

**Compensation limit.** The maximum compensation used for figuring contributions and benefits for a retirement plan has increased from $205,000 to $210,000 for 2005.

**Standard mileage rate.** The standard mileage rate for the cost of operating your car, van, pickup, or panel truck in 2005 is 40.5 cents a mile for all business miles driven before September 1, 2005. The rate is 48.5 cents a mile for business miles driven after August 31, 2005, and before January 1, 2006. See chapter 1.

## What's New for 2006

The following items highlight some changes in the tax law for 2006.

**Elective deferrals.** For 2006, the maximum amount of elective deferrals under a salary reduction agreement that can be contributed to a qualified plan increases to $15,000 ($20,000 if you are age 50 or older). However, for SIMPLE plans, the amount is $10,000 ($12,500 if you are age 50 or older).

**Compensation limit.** The maximum compensation used for figuring contributions and benefits for a retirement plan will increase from $210,000 to $220,000 for 2006.

**Standard mileage rate.** The standard mileage rate for the cost of operating your car, van, pickup, or panel truck in 2006 is 44.5 cents a mile for all business miles.

## Reminders

**Qualified environmental cleanup (remediation) costs.** The deduction for qualified environmental cleanup (remediation) costs include costs you pay or incur before 2006. See chapter 8.

**Marginal production of oil and gas.** The suspension of the taxable income limit on percentage depletion from the marginal production of oil and natural gas has been extended to tax years beginning before 2006. For more information on marginal production, see section 613A(c) of the Internal Revenue Code.

**Maximum clean-fuel vehicle deduction.** 100% of the clean-fuel vehicle deduction and qualified electric vehicle credit are allowed for qualified property placed in service in 2005. See chapter 12.

**Photographs of missing children.** The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

# 1.

# Deducting Business Expenses

## Introduction

This chapter covers the general rules for deducting business expenses. Business expenses are the costs of carrying on a trade or business and they are usually deductible if the business is operated to make a profit.

### Topics

This chapter discusses:

- What you can deduct
- How much you can deduct
- When you can deduct
- Not-for-profit activities

### Useful Items

You may want to see:

**Publication**

- ❑ **334** Tax Guide for Small Business
- ❑ **463** Travel, Entertainment, Gift, and Car Expenses
- ❑ **525** Taxable and Nontaxable Income
- ❑ **529** Miscellaneous Deductions
- ❑ **536** Net Operating Losses (NOLs) for Individuals, Estates, and Trusts
- ❑ **538** Accounting Periods and Methods
- ❑ **542** Corporations
- ❑ **547** Casualties, Disasters, and Thefts
- ❑ **587** Business Use of Your Home (Including Use by Daycare Providers)
- ❑ **925** Passive Activity and At-Risk Rules
- ❑ **936** Home Mortgage Interest Deduction
- ❑ **946** How To Depreciate Property

**Form (and Instructions)**

- ❑ **Sch A (Form 1040)** Itemized Deductions
- ❑ **5213** Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit

See chapter 14 for information about getting publications and forms.

# What Can I Deduct?

To be deductible, a business expense must be both ordinary and necessary. An ordinary expense is one that is common and accepted in your industry. A necessary expense is one that is helpful and appropriate for your trade or business. An expense does not have to be indispensable to be considered necessary.

It is important to distinguish business expenses from:

- The expenses used to figure cost of goods sold,
- Capital expenses, and
- Personal expenses.

## Cost of Goods Sold

If your business manufactures products or purchases them for resale, you generally must value inventory at the beginning and end of each tax year to determine your cost of goods sold. Some of your business expenses may be included in figuring cost of goods sold. Cost of goods sold is deducted from your gross receipts to figure your gross profit for the year. If you include an expense in the cost of goods sold, you cannot deduct it again as a business expense.

The following are types of expenses that go into figuring cost of goods sold.

- The cost of products or raw materials, including freight.
- Storage.
- Direct labor (including contributions to pension or annuity plans) for workers who produce the products.
- Factory overhead.

Under the uniform capitalization rules, you must capitalize the direct costs and part of the indirect costs for certain production or resale activities. Indirect costs include rent, interest, taxes, storage, purchasing, processing, repackaging, handling, and administrative costs.

This rule does not apply to personal property you acquire for resale if your average annual gross receipts (or those of your predecessor) for the preceding 3 tax years are not more than $10 million.

For more information, see the following sources.

- Cost of goods sold — chapter 6 of Publication 334.
- Inventories — Publication 538.
- Uniform capitalization rules — Publication 538 and section 263A of the Internal Revenue Code and the related regulations.

## Capital Expenses

You must capitalize, rather than deduct, some costs. These costs are a part of your investment in your business and are called "capital expenses." Capital expenses are considered assets in your business. There are, in general, three types of costs you capitalize.

- Business start-up costs (See *Tip* below).
- Business assets.
- Improvements.


*You can elect to deduct or amortize certain business start-up costs. See chapters 8 and 9.*

**Cost recovery.** Although you generally cannot take a current deduction for a capital expense, you may be able to recover the amount you spend through depreciation, amortization, or depletion. These recovery methods allow you to deduct part of your cost each year. In this way, you are able to recover your capital expense. See *Amortization* (chapter 9) and *Depletion* (chapter 10) in this publication. You may also be allowed a section 179 deduction. For information on the section 179 deduction and depreciation, see Publication 946.

### Business Assets

There are many different kinds of business assets; for example, land, buildings, machinery, furniture, trucks, patents, and franchise rights. You must fully capitalize the cost of these assets, including freight and installation charges.

Certain property you produce for use in your trade or business must be capitalized under the uniform capitalization rules. See section 1.263A-2 of the regulations for information on these rules.

### Improvements

The costs of making improvements to a business asset are capital expenses if the improvements add to the value of the asset, appreciably lengthen the time you can use it, or adapt it to a different use. Improvements are generally major expenditures. Some examples are: new electric wiring, a new roof, a new floor, new plumbing, bricking up windows to strengthen a wall, and lighting improvements.

However, you can currently deduct repairs that keep your property in a normal efficient operating condition as a business expense. Treat as repairs amounts paid to replace parts of a machine that only keep it in a normal operating condition.

**Restoration plan.** Capitalize the cost of reconditioning, improving, or altering your property as part of a general restoration plan to make it suitable for your business. This applies even if some of the work would by itself be classified as repairs.

## Capital versus Deductible Expenses

To help you distinguish between capital and deductible expenses, different examples are given below.

**Motor vehicles.** You usually capitalize the cost of a motor vehicle you use in your business. You can recover its cost through annual deductions for depreciation.

There are dollar limits on the depreciation you can claim each year on passenger automobiles used in your business. See Publication 463.

Generally, repairs you make to your business vehicle are currently deductible. However, amounts you pay to recondition and overhaul a business vehicle are capital expenses and are recovered through depreciation.

**Roads and driveways.** The costs of building a private road on your business property and the cost of replacing a gravel driveway with a concrete one are capital expenses you may be able to depreciate. The cost of maintaining a private road on your business property is a deductible expense.

**Tools.** Unless the uniform capitalization rules apply, amounts spent for tools used in your business are deductible expenses if the tools have a life expectancy of less than 1 year or their cost is minor.

**Machinery parts.** Unless the uniform capitalization rules apply, the cost of replacing short-lived parts of a machine to keep it in good working condition, but not add to its life, is a deductible expense.

**Heating equipment.** The cost of changing from one heating system to another is a capital expense.

## Personal versus Business Expenses

Generally, you cannot deduct personal, living, or family expenses. However, if you have an expense for something that is used partly for business and partly for personal purposes, divide the total cost between the business and personal parts. You can deduct the business part.

For example, if you borrow money and use 70% of it for business and the other 30% for a family vacation, you can deduct 70% of the interest as a business expense. The remaining 30% is personal interest and is not deductible. See chapter 5 for information on deducting interest and the allocation rules.

**Business use of your home.** If you use part of your home for business, you may be able to deduct expenses for the business use of your home. These expenses may include mortgage interest, insurance, utilities, repairs, and depreciation.

To qualify to claim expenses for the business use of your home, you must meet both of the following tests.

1. The business part of your home must be used exclusively and regularly for your trade or business.
2. The business part of your home must be:
   a. Your principal place of business, or
   b. A place where you meet or deal with patients, clients, or customers in the normal course of your trade or business, or
   c. A separate structure (not attached to your home) used in connection with your trade or business.

You generally do not have to meet the exclusive use test for the part of your home that you regularly use either for the storage of inventory or product samples, or as a daycare facility.

Your home office qualifies as your principal place of business if you meet the following requirements.

- You use the office exclusively and regularly for administrative or management activities of your trade or business.
- You have no other fixed location where you conduct substantial administrative or management activities of your trade or business.

If you have more than one business location, determine your principal place of business based on the following factors.

- The relative importance of the activities performed at each location.
- If the relative importance factor does not determine your principal place of business, consider the time spent at each location.

For more information, see Publication 587.

**Business use of your car.** If you use your car exclusively in your business, you can deduct car expenses. If you use your car for both business and personal purposes, you must divide your expenses based on actual mileage.

You can deduct actual car expenses, which include depreciation (or lease payments), gas and oil, tires, repairs, tune-ups, insurance, and registration fees. Or, instead of figuring the business part of these actual expenses, you may be able to use the standard mileage rate to figure your deduction. For 2005, the standard mileage rate is 40.5 cents a mile for all business miles driven before September 1, 2005. The rate is 48.5 cents a mile for business miles driven after August 31, 2005, and before January 1, 2006.

If you are self-employed, you can also deduct the business part of interest on your car loan, state and local personal property tax on the car, parking fees, and tolls, whether or not you claim the standard mileage rate.

For more information on car expenses and the rules for using the standard mileage rate, see Publication 463.

# How Much Can I Deduct?

You can deduct the cost of a business expense if it meets the criteria of ordinary and necessary and it is not a capital expense.

**Recovery of amount deducted (tax benefit rule).** If you recover part of an expense in the same tax year in which you would have claimed a deduction, reduce your current year expense by the amount of the recovery. If you have a recovery in a later year, include the recovered amount in income in that year. However, if part of the deduction for the expense did not reduce your tax, you do not have to include that part of the recovered amount in income.

For more information on recoveries and the tax benefit rule, see Publication 525.

**Payments in kind.** If you provide services to pay a business expense, the amount you can deduct is limited to your out-of-pocket costs. You cannot deduct the cost of your own labor.

Similarly, if you pay a business expense in goods or other property, you can deduct only what the property costs you. If these costs are included in the cost of goods sold, do not deduct them as a business expense.

**Limits on losses.** If your deductions for an investment or business activity are more than the income it brings in, you have a loss. There may be limits on how much of the loss you can deduct.

***Not-for-profit limits.*** If you carry on your business activity without the intention of making a profit, you cannot use a loss from it to offset other income. See *Not-for-Profit Activities,* later.

***At-risk limits.*** Generally, a deductible loss from a trade or business or other income-producing activity is limited to the investment you have "at risk" in the activity. You are at risk in any activity for the following.

1. The money and adjusted basis of property you contribute to the activity.
2. Amounts you borrow for use in the activity if:
   a. You are personally liable for repayment, or
   b. You pledge property (other than property used in the activity) as security for the loan.

For more information, see Publication 925.

***Passive activities.*** Generally, you are in a passive activity if you have a trade or business activity in which you do not materially participate, or a rental activity. In general, deductions for losses from passive activities only offset income from passive activities. You cannot use any excess deductions to offset other income. In addition, passive activity credits can only offset the tax on net passive income. Any excess loss or credits are carried over to later years. Suspended passive losses are fully deductible in the year you completely dispose of the activity. For more information, see Publication 925.

***Net operating loss.*** If your deductions are more than your income for the year, you may have a "net operating loss." You can use a net operating loss to lower your taxes in other years. See Publication 536 for more information.

See Publication 542 for information about net operating losses of corporations.

# When Can I Deduct an Expense?

When you can deduct an expense depends on your accounting method. An accounting method is a set of rules used to determine when and how income and expenses are reported. The two basic methods are the cash method and the accrual method. Whichever method you choose must clearly reflect income.

For more information on accounting methods, see Publication 538.

**Cash method.** Under the cash method of accounting, you generally deduct business expenses in the tax year you pay them.

**Accrual method.** Under an accrual method of accounting, you generally deduct business expenses when both of the following apply.

1. The all-events test has been met. The test is met when:
   a. All events have occurred that fix the fact of liability, and
   b. The liability can be determined with reasonable accuracy.
2. Economic performance has occurred.

***Economic performance.*** You generally cannot deduct or capitalize a business expense until economic performance occurs. If your expense is for property or services provided to you, or for your use of property, economic performance occurs as the property or services are provided, or the property is used. If your expense is for property or services you provide to others, economic performance occurs as you provide the property or services.

***Example.*** Your tax year is the calendar year. In December 2005, the Field Plumbing Company did some repair work at your place of business and sent you a bill for $600. You paid it by check in January 2006. If you use the accrual method of accounting, deduct the $600 on your tax return for 2005 because all events have occurred to "fix" the fact of liability (in this case the work was completed), the liability can be determined, and economic performance occurred in that year.

If you use the cash method of accounting, deduct the expense on your 2006 return.

**Prepayment.** You generally cannot deduct expenses in advance, even if you pay them in advance. This rule applies to both the cash and accrual methods. It applies to prepaid interest, prepaid insurance premiums, and any other expense paid far enough in advance to, in effect, create an asset with a useful life extending substantially beyond the end of the current tax year.

***Example.*** In 2005, you sign a 10-year lease and immediately pay your rent for the first 3 years. Even though you paid the rent for 2005, 2006, and 2007, you can only deduct the rent for 2005 on your 2005 tax return. You can deduct the rent for 2006 and 2007 on your tax returns for those years.

**Contested liability.** Under the cash method, you can deduct a contested liability only in the year you pay the liability. Under the accrual method, you can deduct contested liabilities such as taxes (except foreign or U.S. possession income, war profits, and excess profits taxes) either in the tax year you pay the liability (or transfer money or other property to satisfy the obligation) or in the tax year you settle the contest. However, to take the deduction in the year of payment or transfer, you must meet certain conditions. See *Contested Liability* in Publication 538 for more information.

**Related person.** Under an accrual method of accounting, you generally deduct expenses when you incur them, even if you have not yet paid them. However, if you and the person you owe are related and that person uses the cash method of accounting, you must pay the expense before you can deduct it. Your deduction

is allowed when the amount is includible in income by the related cash method payee. See *Related Persons* in Publication 538.

# Not-for-Profit Activities

If you do not carry on your business or investment activity to make a profit, you cannot use a loss from the activity to offset other income. Activities you do as a hobby, or mainly for sport or recreation, are often not entered into for profit.

The limit on not-for-profit losses applies to individuals, partnerships, estates, trusts, and S corporations. It does not apply to corporations other than S corporations.

In determining whether you are carrying on an activity for profit, several factors are taken into account. No one factor alone is decisive. Among the factors to consider are whether:

- You carry on the activity in a businesslike manner,
- The time and effort you put into the activity indicate you intend to make it profitable,
- You depend on the income for your livelihood,
- Your losses are due to circumstances beyond your control (or are normal in the start-up phase of your type of business),
- You change your methods of operation in an attempt to improve profitability,
- You (or your advisors) have the knowledge needed to carry on the activity as a successful business,
- You were successful in making a profit in similar activities in the past,
- The activity makes a profit in some years, and
- You can expect to make a future profit from the appreciation of the assets used in the activity.

**Presumption of profit.** An activity is presumed carried on for profit if it produced a profit in at least 3 of the last 5 tax years, including the current year. Activities that consist primarily of breeding, training, showing, or racing horses are presumed carried on for profit if they produced a profit in at least 2 of the last 7 tax years, including the current year. The activity must be substantially the same for each year within this period. You have a profit when the gross income from an activity exceeds the deductions.

If a taxpayer dies before the end of the 5-year (or 7-year) period, the "test" period ends on the date of the taxpayer's death.

If your business or investment activity passes this 3- (or 2-) years-of-profit test, the IRS will presume it is carried on for profit. This means the limits discussed here will not apply. You can take all your business deductions from the activity, even for the years that you have a loss. You can rely on this presumption unless the IRS later shows it to be invalid.

**Using the presumption later.** If you are starting an activity and do not have 3 (or 2) years showing a profit, you can elect to have the presumption made after you have the 5 (or 7) years of experience allowed by the test.

You can elect to do this by filing Form 5213. Filing this form postpones any determination that your activity is not carried on for profit until 5 (or 7) years have passed since you started the activity.

The benefit gained by making this election is that the IRS will not immediately question whether your activity is engaged in for profit. Accordingly, it will not restrict your deductions. Rather, you will gain time to earn a profit in the required number of years. If you show 3 (or 2) years of profit at the end of this period, your deductions are not limited under these rules. If you do not have 3 (or 2) years of profit, the limit can be applied retroactively to any year with a loss in the 5-year (or 7-year) period.

Filing Form 5213 automatically extends the period of limitations on any year in the 5-year (or 7-year) period to 2 years after the due date of the return for the last year of the period. The period is extended only for deductions of the activity and any related deductions that might be affected.

**TIP** *You must file Form 5213 within 3 years after the due date of your return for the year in which you first carried on the activity, or, if earlier, within 60 days after receiving written notice from the Internal Revenue Service proposing to disallow deductions attributable to the activity.*

## Limit on Deductions

If your activity is not carried on for profit, take deductions in the following order and only to the extent stated in the three categories. If you are an individual, these deductions may be taken only if you itemize. These deductions may be taken on Schedule A (Form 1040).

**Category 1.** Deductions you can take for personal as well as for business activities are allowed in full. For individuals, all nonbusiness deductions, such as those for home mortgage interest, taxes, and casualty losses, belong in this category. Deduct them on the appropriate lines of Schedule A (Form 1040). You can deduct a casualty loss on property you own for personal use only to the extent it is more than $100 and exceeds 10% of your adjusted gross income. See Publication 547 for more information on casualty losses. For the limits that apply to mortgage interest, see Publication 936.

**Category 2.** Deductions that do not result in an adjustment to the basis of property are allowed next, but only to the extent your gross income from the activity is more than your deductions under the first category. Most business deductions, such as those for advertising, insurance premiums, interest, utilities, and wages, belong in this category.

**Category 3.** Business deductions that decrease the basis of property are allowed last, but only to the extent the gross income from the activity exceeds the deductions you take under the first two categories. Deductions for depreciation, amortization, and the part of a casualty loss an individual could not deduct in category (1) belong in this category. Where more than one asset is involved, allocate depreciation and these other deductions proportionally.

**TIP** *Individuals must claim the amounts in categories* (2) *and* (3) *as miscellaneous deductions on Schedule A (Form 1040). They are subject to the 2%-of-adjusted-gross-income limit. See Publication 529 for information on this limit.*

***Example.*** Ida is engaged in a not-for-profit activity. The income and expenses of the activity are as follows.

| | | |
|---|---|---|
| Gross income | | $3,200 |
| Subtract: | | |
| Real estate taxes | $700 | |
| Home mortgage interest | 900 | |
| Insurance | 400 | |
| Utilities | 700 | |
| Maintenance | 200 | |
| Depreciation on an automobile | 600 | |
| Depreciation on a machine | 200 | 3,700 |
| **Loss** | | **$(500)** |

Ida must limit her deductions to $3,200, the gross income she earned from the activity. The limit is reached in category (3), as follows.

| | | |
|---|---|---|
| Limit on deduction | | $3,200 |
| Category 1: Taxes and interest | $1,600 | |
| Category 2: Insurance, utilities, and maintenance | 1,300 | 2,900 |
| **Available for Category 3** | | **$ 300** |

The $800 of depreciation is allocated between the automobile and machine as follows.

$\frac{\$600}{\$800} \times \$300 = \$225$ depreciation for the automobile

$\frac{\$200}{\$800} \times \$300 = \$75$ depreciation for the machine

The basis of each asset is reduced accordingly.

The $1,600 for category (1) is deductible in full on the appropriate lines for taxes and interest on Schedule A (Form 1040). Ida deducts the remaining $1,600 ($1,300 for category (2) and $300 for category (3)) as other miscellaneous deductions on Schedule A (Form 1040) subject to the 2%-of-adjusted-gross-income limit.

**Partnerships and S corporations.** If a partnership or S corporation carries on a not-for-profit activity, these limits apply at the partnership or S corporation level. They are reflected in the individual shareholder's or partner's distributive shares.

**More than one activity.** If you have several undertakings, each may be a separate activity or several undertakings may be combined. The following are the most significant facts and circumstances in making this determination.

- The degree of organizational and economic interrelationship of various undertakings.
- The business purpose that is (or might be) served by carrying on the various undertakings separately or together in a business or investment setting.
- The similarity of the undertakings.

The IRS will generally accept your characterization if it is supported by facts and circumstances.

TIP *If you are carrying on two or more different activities, keep the deductions and income from each one separate. Figure separately whether each is a not-for-profit activity. Then figure the limit on deductions and losses separately for each activity that is not for profit.*

# 2.

# Employees' Pay

## Introduction

You can generally deduct the pay you give your employees for the services they perform. The pay may be in cash, property, or services. It may include wages, or salaries, or other compensation such as: vacation allowances, bonuses, commissions, and fringe benefits. For information about deducting employment taxes, see chapter 6.

TIP *You can claim the following employment credits if you hire individuals who meet certain requirements.*

- *Empowerment zone and renewal community employment credit.*
- *Indian employment credit.*
- *Welfare-to-work credit.*
- *Work opportunity credit.*
- *Credits for employers affected by Hurricane Katrina, Rita, or Wilma.*

*Reduce your deduction for employee wages by the amount of any employment credits you claim. For more information about these credits, see Publication 954,* Tax Incentives for Distressed Communities, *or Publication 4492,* Information for Taxpayers Affected by Hurricanes Katrina, Rita, and Wilma.

### Topics

This chapter discusses:

- Tests for deducting pay
- Kinds of pay

### Useful Items

You may want to see:

**Publication**

- ❑ **15** (Circular E), Employer's Tax Guide
- ❑ **15-A** Employer's Supplemental Tax Guide
- ❑ **15-B** Employer's Tax Guide to Fringe Benefits

See chapter 14 for information about getting publications and forms.

## Tests for Deducting Pay

To be deductible, your employees' pay must be an ordinary and necessary expense and you must pay or incur it. These and other requirements that apply to all business expenses are explained in chapter 1.

In addition, the pay must meet both of the following tests.

- ***Test 1.*** It must be reasonable.
- ***Test 2.*** It must be for services performed.

The form or method of figuring the pay does not affect its deductibility. For example, bonuses and commissions based on sales **or** earnings, and paid under an agreement made before the services were performed, are both deductible.

### Test 1—Reasonableness

Determine the reasonableness of pay by the facts and circumstances. Generally, reasonable pay is the amount that like enterprises would pay for the same, or similar, services.

You must be able to prove that the pay is reasonable. Base this test on the circumstances that exist when you contract for the services, not those that exist when the reasonableness is questioned. If the pay is excessive, you cannot deduct the excess.

**Factors to consider.** To determine if pay is reasonable, consider the following items and any other pertinent facts.

- The duties performed by the employee.
- The volume of business handled.
- The character and amount of responsibility.
- The complexities of your business.
- The amount of time required.
- The cost of living in the locality.
- The ability and achievements of the individual employee performing the service.
- The pay compared with the gross and net income of the business, as well as with distributions to shareholders if the business is a corporation.
- Your policy regarding pay for all your employees.
- The history of pay for each employee.

**Individual officer's pay.** You must base the test of whether an individual officer's pay is reasonable on each individual officer's pay and the service performed, not on the total amount paid to all officers or all employees. For example, even if the total amount you pay to your officers is reasonable, you cannot deduct the part of an individual officer's pay that is not reasonable.

### Test 2—For Services Performed

You must be able to prove the payment was made for services actually performed.

**Employee-shareholder salaries.** If a corporation pays an employee who is also a shareholder a salary that is unreasonably high considering the services actually performed, the excessive part of the salary may be treated as a constructive distribution to the employee-shareholder. For more information on corporate distributions to shareholders, see Publication 542, Corporations.

## Kinds of Pay

Some of the ways you may provide pay to your employees in addition to regular wages or salaries are discussed next. For specialized and detailed information on employees' pay and the employment tax treatment of employees' pay, see Pub. 15, Pub. 15-A, and Pub. 15-B.

### Awards

You can generally deduct amounts you pay to your employees as awards, whether paid in cash or property. If you give property to an employee as an employee achievement award, your deduction may be limited.

**Achievement awards.** An achievement award is an item of tangible personal property that meets all the following requirements.

- It is given to an employee for length of service or safety achievement.
- It is awarded as part of a meaningful presentation.
- It is awarded under conditions and circumstances that do not create a significant likelihood of disguised pay.

***Length-of-service award.*** An award will qualify as a length-of-service award if either of the following applies.

- The employee receives the award after his or her first 5 years of employment.
- The employee did not receive another length-of-service award (other than one of very small value) during the same year or in any of the prior 4 years.

***Safety achievement award.*** An award for safety achievement will qualify as an achievement award *unless* one of the following applies.

1. It is given to a manager, administrator, clerical employee, or other professional employee.
2. During the tax year, more than 10% of your employees, excluding those listed in (1), have already received a safety achievement award (other than one of very small value).

***Deduction limit.*** Your deduction for the cost of employee achievement awards given to any one employee during the tax year is limited to the following.

- $400 for awards that are not qualified plan awards.
- $1,600 for all awards, whether or not qualified plan awards.

Deduct achievement awards as a nonwage business expense on your return or business schedule.

A qualified plan award is an achievement award given as part of an established written plan or program that does not favor highly compensated employees as to eligibility or benefits.

A highly compensated employee for 2005 is an employee who meets *either* of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $95,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees ranked by pay for the preceding year.

An award is not a qualified plan award if the average cost of all the employee achievement awards given during the tax year (that would be qualified plan awards except for this limit) is more than $400. To figure this average cost, ignore awards of nominal value.

**TIP** *You may not owe employment taxes on the value of some achievement awards you provide to an employee. See Publication 15-B.*

## Bonuses

You can generally deduct a bonus paid to an employee if you intended the bonus as additional pay for services, not as a gift, and the services were performed. However, the total bonuses, salaries, and other pay must be reasonable for the services performed. If the bonus is paid in property, see *Property*, later.

**Gifts of nominal value.** If, to promote employee goodwill, you distribute turkeys, hams, or other merchandise of nominal value to your employees at holidays, you can deduct the cost of these items as a nonwage business expense. Your deduction for de minimus gifts of food or drink are **not** subject to the 50% deduction limit that generally applies to meals. For more information on this deduction limit, see *Meals and lodging*, later.

## Education Expenses

If you pay or reimburse education expenses for an employee, you can deduct the payments. Deduct them on the "employee benefit programs" or other appropriate line of your tax return if they are part of a qualified educational assistance program. For information on educational assistance programs, see *Educational Assistance* in section 2 of Publication 15-B.

## Fringe Benefits

A fringe benefit is a form of pay for the performance of services. You can generally deduct the cost of fringe benefits.

You may be able to exclude all or part of the value of some fringe benefits from your employees' pay. You also may not owe employment taxes on the value of the fringe benefits. See *Table 2-1* in Publication 15-B for details.

Your deduction for the cost of fringe benefits for activities generally considered entertainment, amusement, or recreation, or for a facility used in connection with such an activity (for example, a company aircraft) for certain officers, directors, and more-than-10% shareholders is limited to the amount actually reported as compensation subject to employment taxes. See Pub. 15-B for more information on fringe benefits included as compensation.

The following are examples of fringe benefits.

- Benefits under employee benefit programs (defined below).
- Meals and lodging.
- Use of a car.
- Flights on airplanes.
- Discounts on property or services.
- Memberships in country clubs or other social clubs.
- Tickets to entertainment or sporting events.

**Employee benefit programs.** Employee benefit programs include the following.

- Accident and health plans.
- Adoption assistance.
- Cafeteria plans.
- Dependent care assistance.
- Educational assistance.
- Life insurance coverage.
- Welfare benefit funds.

You can generally deduct amounts you spend on employee benefit programs on the "employee benefit programs" or other applicable line of your tax return. For example, if you provide dependent care by operating a dependent care facility for your employees, deduct your costs in whatever categories they fall (utilities, salaries, etc.).

***Life insurance coverage.*** You cannot deduct the cost of life insurance coverage for you, an employee, or any person with a financial interest in your business, if you are directly or indirectly the beneficiary of the policy. See Regulations section 1.264-1 for more information.

***Welfare benefit funds.*** A welfare benefit fund is a funded plan (or a funded arrangement having the effect of a plan) that provides welfare benefits to your employees, independent contractors, or their beneficiaries. Welfare benefits are any benefits other than deferred compensation or transfers of restricted property.

Your deduction for contributions to a welfare benefit fund is limited to the fund's qualified cost for the tax year. If your contributions to the fund are more than its qualified cost, carry the excess over to the next tax year.

Generally, the fund's "qualified cost" is the total of the following amounts, reduced by the after-tax income of the fund.

- The cost you would have been able to deduct using the cash method of accounting if you had paid for the benefits directly.
- The contributions added to a reserve account that are needed to fund claims incurred but not paid as of the end of the year. These claims can be for supplemental unemployment benefits, severance pay, or disability, medical, or life insurance benefits.

For more information, see sections 419(c) and 419A of the Internal Revenue Code and the related regulations.

**Meals and lodging.** You can usually deduct the cost of furnishing meals and lodging to your employees. Deduct the cost in whatever category the expense falls. For example, if you operate a restaurant, deduct the cost of the meals you furnish to employees as part of the cost of goods sold. If you operate a nursing home, motel, or rental property, deduct the cost of furnishing lodging to an employee as expenses for utilities, linen service, salaries, depreciation, etc.

***Deduction limit on meals.*** You can generally deduct only 50% of the cost of furnishing meals to your employees. However, you can deduct the full cost of the following meals.

- Meals whose value you include in an employee's wages.
- Meals that qualify as a de minimus fringe benefit as discussed in section 2 of Publication 15-B. This generally includes meals you furnish to employees at your place of business if more than half of these employees are provided the meals for your convenience.
- Meals you furnish to your employees at the work site when you operate a restaurant or catering service.
- Meals you furnish to your employees as part of the expense of providing recreational or social activities, such as a company picnic.
- Meals you are required by federal law to furnish to crew members of certain commercial vessels (or would be required to furnish if the vessels were operated at sea). This does not include meals you furnish on vessels primarily providing luxury water transportation.
- Meals you furnish on an oil or gas platform or drilling rig located offshore or in Alaska. This includes meals you furnish at a support camp that is near and integral to an oil or gas drilling rig located in Alaska.

## Loans or Advances

You generally can deduct as wages an advance you make to an employee for services performed if you do not expect the employee to repay the advance. However, if the employee performs no services, treat the amount you advanced as a loan. If the employee does not repay the loan, it may be deductible as a bad debt. See chapter 11 for information on the deduction for bad debts.

**Below-market interest rate loans.** On certain loans you make to an employee or shareholder, you are treated as having received interest income and as having paid compensation or dividends equal to that interest. See *Below-Market Loans* in chapter 5.

## Property

If you transfer property (including your company's stock) to an employee as payment for services, you can generally deduct it as wages. The amount you can deduct is the property's fair market value on the date of the transfer less any amount the employee paid for the property.

You can claim the deduction only for the tax year in which your employee includes the property's value in income. Your employee is deemed to have included the value in income if you report it on Form W-2 in a timely manner.

You treat the deductible amount as received in exchange for the property, and you must recognize any gain or loss realized on the transfer. Your gain or loss is the difference between the fair market value of the property and its adjusted basis on the date of transfer.


*A corporation recognizes no gain or loss when it pays for services with its own stock.*

These rules also apply to property transferred to an independent contractor, generally reported on Form 1099-MISC.

**Restricted property.** If the property you transfer for services is subject to restrictions that affect its value, you generally cannot deduct it and do not report gain or loss until it is substantially vested in the recipient. However, if the recipient pays for the property, you must report any gain at the time of the transfer up to the amount paid.

"Substantially vested" means the property is not subject to a substantial risk of forfeiture. This means that the recipient is not likely to have to give up his or her rights in the property in the future.

## Reimbursements for Business Expenses

You can generally deduct the amount you pay or reimburse employees for business expenses incurred for your business. However, your deduction may be limited.

If you make the payment under an accountable plan, deduct it in the category of the expense paid. For example, if you pay an employee for travel expenses incurred on your behalf, deduct this payment as a travel expense. If you make the payment under a nonaccountable plan, deduct it as wages.

See *Reimbursement of Travel, Meals, and Entertainment* in chapter 13 for more information about deducting reimbursements and an explanation of accountable and nonaccountable plans.

## Sick and Vacation Pay

You can deduct amounts you pay to your employees for sickness and injury, including lump-sum amounts, as wages. However, your deduction is limited to amounts not compensated by insurance or other means.

Vacation pay is an employee benefit. It includes amounts paid for unused vacation leave. You can deduct vacation pay only in the tax year in which the employee actually receives it. This rule applies regardless of whether you use the cash or accrual method of accounting.

# 3.

# Retirement Plans

## What's New

**Katrina Emergency Tax Relief Act of 2005 and Gulf Opportunity Zone Act of 2005.** Both Acts provide for tax-favored withdrawals, repayments, and loans from certain retirement plans for taxpayers who suffered economic losses as a result of Hurricane Katrina, Rita, or Wilma. See Publication 4492, Information for Taxpayers Affected by Hurricanes Katrina, Rita, and Wilma, for more information.

## What's New for 2005

**Compensation limit.** For 2005, the maximum compensation used for figuring contributions and benefits increases to $210,000.

**Elective deferrals.** The limit on elective deferrals increases to $14,000 for tax years beginning in 2005 and then increases to $15,000 in 2006. These new limits will apply for participants in SARSEPs, 401(k) plans (excluding SIMPLE plans), and deferred compensation plans of state or local governments and tax-exempt organizations. The $15,000 figure is subject to cost-of-living increases after 2006.

***Catch-up contributions.*** A plan can permit participants who are age 50 or over at the end of the calendar year to also make catch-up contributions. The catch-up contribution limit for 2005 is $4,000. This limit increases to $5,000 in 2006. The limit is subject to cost-of-living increases after 2006. The catch-up contribution a participant can make for a year cannot exceed the lesser of the following amounts.

- The catch-up contribution limit.
- The excess of the participant's compensation over the elective deferrals that are not catch-up contributions.

**SIMPLE plan salary reduction contributions.** The limit on salary reduction contributions to a SIMPLE plan increases to $10,000 beginning in 2005. The $10,000 figure is subject to adjustment after 2005 for cost-of-living increases.

***Catch-up contributions.*** A SIMPLE plan can permit participants who are age 50 or over at the end of the calendar year to make catch-up contributions. The catch-up contribution limit for 2005 is $2,000. This limit increases to $2,500 in 2006. The limit is subject to cost-of-living increases after 2006. The catch-up contributions a participant can make for a year cannot exceed the lesser of the following amounts.

- The catch-up contribution limit.
- The excess of the participant's compensation over the salary reduction contributions that are not catch-up contributions.

## Introduction

This chapter discusses retirement plans you can set up and maintain for yourself and your employees. Retirement plans are savings plans that offer you tax advantages to set aside money for your own and your employees' retirement.

In general, a sole proprietor or a partner is treated as an employee for retirement plan purposes.

SEP, SIMPLE, and qualified plans offer you and your employees a tax favored way to save for retirement. You can deduct contributions you make to the plan for your employees. If you are a sole proprietor, you can deduct contributions you make to the plan for yourself. You can also deduct trustees' fees if contributions to the plan do not cover them. Earnings on the contributions are generally tax free until you or your employees receive distributions from the plan.

Under certain plans, employees can have you contribute limited amounts of their before-tax pay to a plan. These amounts (and the earnings on them) are generally tax free until your employees receive distributions from the plan.

In general, individuals who are employed or self-employed can also set up and contribute to individual retirement arrangements (IRAs).

### Topics

This chapter discusses:

- Simplified employee pension (SEP) plans
- SIMPLE (Savings incentive match plan for employees) retirement plans
- Qualified plans (also called H.R. 10 plans or Keogh plans when covering self-employed individuals)
- Individual retirement arrangements (IRAs)

### Useful Items

You may want to see:

**Publication**

- ❑ **560** Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)
- ❑ **590** Individual Retirement Arrangements (IRAs)

**Form (and Instructions)**

- ❑ **W-2** Wage and Tax Statement
- ❑ **5304-SIMPLE** Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution
- ❑ **5305-SIMPLE** Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution

See chapter 14 for information about getting publications and forms.

# Simplified Employee Pension (SEP)

A simplified employee pension (SEP) is a written plan that allows you to make deductible contributions toward your own and your employees' retirement without getting involved in more complex retirement plans. A corporation also can have a SEP and make deductible contributions toward its employees' retirement. However, certain advantages available to qualified plans, such as the special tax treatment that may apply to lump-sum distributions, do not apply to SEPs.

Under a SEP, you make the contributions to a traditional individual retirement arrangement (called a SEP-IRA) set up for each eligible employee.

SEP-IRAs are set up for, at a minimum, each eligible employee. A SEP-IRA may have to be set up for a leased employee, but need not be set up for an excludable employee. For more information, see Publication 560.

**Form 5305-SEP.** You may be able to use Form 5305-SEP, Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement, in setting up your SEP.

## Contribution Limits

Contributions you make for 2005 to a common-law employee's SEP-IRA are limited to the lesser of $42,000 or 25% of the employee's compensation. Compensation generally does not include your contributions to the SEP, but does include certain elective deferrals unless you choose not to include them.

**Annual compensation limit.** You generally cannot consider the part of an employee's compensation over $210,000 when you figure your contribution limit for that employee.

**More than one plan.** If you also contribute to a defined contribution retirement plan (defined later), annual additions to all of a participant's accounts are limited to the lesser of $42,000 or 100% of the participant's compensation. When you figure this limit, you must add your contributions to all defined contribution plans. A SEP is considered a defined contribution plan for this limit.

**Contributions for yourself.** The annual limits on your contributions to a common-law employee's SEP-IRA also apply to contributions you make to your own SEP-IRA.

## Deduction Limit

The most you can deduct for employer contributions (other than elective deferrals) for a common-law employee is 25% of the compensation (limited to $210,000 per participant) paid to him or her during the year from the business that has the plan, not to exceed $42,000 per participant.

**Deduction of contributions for yourself.** When figuring the deduction for employer contributions made to your own SEP-IRA, compensation is your net earnings from self-employment minus the following amounts.

1. The deduction for one-half of your self-employment tax.
2. The deduction for contributions to your own SEP-IRA.

The deduction for contributions to your own SEP-IRA and your net earnings depend on each other. For this reason, you determine the deduction for contributions to your own SEP-IRA indirectly by reducing the contribution rate called for in your plan. Use *Worksheet 3-A* shown under *Qualified Plan,* later, to figure the rate.

**SEP and defined contribution plan.** If you also contributed to a qualified defined contribution plan, you must reduce the 25% deduction limit for that plan by the allowable deduction for contributions to the SEP-IRAs of those participating in both the SEP plan and the defined contribution plan.

**SEP and another qualified plan.** If you also contributed to any other type of qualified plan, treat the SEP as a separate profit-sharing (defined contribution) plan when applying the overall 25% deduction limit described in section 404(h)(3) of the Internal Revenue Code.


*If your SEP contribution is more than the deduction limit (nondeductible contribution), you can carry over and deduct the difference in later years. However, the contribution carryover, when combined with the contribution for the later year, is subject to the deduction limit for that year.*

**Employee contributions.** Employees can also make contributions of up to $4,000 (or $4,500 if they are 50 or older) for 2005 to their SEP-IRAs independent of the employer's SEP contributions. However, the employee's deduction for IRA contributions may be reduced or eliminated because the employee is covered by an employer retirement plan (the SEP plan). See Publication 590 for details.

## Salary Reduction Simplified Employee Pension (SARSEP)


*An employer is no longer allowed to set up a SARSEP. However, participants in a SARSEP set up before 1997 (including employees hired after 1996) can continue to have their employer contribute part of their pay to the plan.*

A SARSEP is a SEP set up before 1997 that included a salary reduction arrangement. Under the arrangement, employees can choose to have you contribute part of their pay to their SEP-IRAs rather than receive it in cash. This contribution is called an elective deferral because employees choose (elect) to set aside the money and the income tax on the money is deferred until it is distributed.

This choice is available only if all the following requirements are met.

- The SARSEP was set up before 1997.
- At least 50% of the eligible employees choose the salary reduction arrangement.
- You had 25 or fewer eligible employees (or employees who would have been eligible if you had maintained a SEP) at any time during the preceding year.
- Each eligible highly compensated employee's deferral percentage each year is no more than 125% of the average deferral percentage (ADP) of all nonhighly compensated employees eligible to participate (the ADP test). See Publication 560 for the definition of a highly compensated employee and information on how to figure the deferral percentage.

**Limit on elective deferrals.** In general, the total income an employee can defer under a SARSEP and certain other elective deferral arrangements for 2005 is limited to the lesser of $14,000 or 25% of the employee's compensation (as defined in Publication 560). This limit applies only to amounts that reduce the employee's pay, not to any contributions from employer funds.

**Catch-up contributions.** A SEP can permit participants who are age 50 or older at the end of the calendar year to make catch-up contributions. The catch-up contribution limit for 2005 is $4,000 ($5,000 for 2006). Elective deferrals are not treated as catch-up contributions for 2005 until they exceed the limit discussed earlier under *Limit on elective deferrals,* the SARSEP ADP test (see Publication 560), or the plan limit (if any). However, the catch-up contribution a participant can make for a year cannot exceed the lesser of the following amounts.

- The catch-up contribution limit.
- The excess of the participant's compensation over the elective deferrals that are not catch-up contributions.

Catch-up contributions are not subject to the limit discussed under *Limit on elective deferrals*, earlier.

**Deduction limit and elective deferrals.** Compensation, as discussed earlier, under *Deduction Limit,* includes elective deferrals. Elective deferrals are no longer subject to this deduction limit. However, the combined deduction for a participant's elective deferrals, and other SEP contributions, cannot exceed $42,000.

**Employment taxes.** Elective deferrals that meet the ADP test are not subject to income tax in the year of deferral, but they are included in wages for social security, Medicare, and federal unemployment (FUTA) tax.

## Reporting SEP Contributions on Form W-2

Your contributions to an employee's SEP-IRA are excluded from the employee's income. Do not include these contributions in your employee's wages on Form W-2 for income, social security, or Medicare tax purposes. However, your SEP contributions under a salary reduction arrangement are included in your employee's wages for social security and Medicare tax purposes only.

***Example.*** Jim's salary reduction arrangement calls for 10% of his salary to be contributed by his employer as an elective deferral to Jim's SEP-IRA. Jim's salary for the year is $30,000

(before reduction for the deferral). The employer did not choose to treat deferrals as compensation under the arrangement. To figure the deferral, the employer multiplies Jim's salary of $30,000 by 9.0909%, the reduced rate equivalent of 10%, to get the deferral of $2,727.27. (This method is the same one you, as a self-employed person, use to figure the contributions you make on your own behalf. See *Worksheet 3-A,* under *Qualified Plan,* later.)

On Jim's Form W-2, his employer shows total wages of $27,272.73 ($30,000 – $2,727.27), social security wages of $30,000, and Medicare wages of $30,000. Jim reports $27,272.73 as wages on his individual income tax return.

If his employer chooses to treat the deferrals as compensation, Jim's deferral would be $3,000 ($30,000 x 10%). In this case, the employer uses the rate called for under the arrangement (not the reduced rate) to figure the deferral and the ADP test. On Jim's Form W-2, the employer shows total wages of $27,000 ($30,000 – $3,000), social security wages of $30,000, and Medicare wages of $30,000. Jim reports $27,000 as wages on his return.

**More information.** For more information on employer withholding requirements, see Publication 15, (Circular E), Employer's Tax Guide.

For more information on SEPs, see Publication 560.

# SIMPLE Retirement Plans

A Savings Incentive Match Plan for Employees (SIMPLE plan) is a written arrangement that provides you and your employees with a simplified way to make contributions to provide retirement income. Under a SIMPLE plan, employees can choose to make salary reduction contributions to the plan rather than receiving these amounts as part of their regular pay. In addition, you will contribute matching or nonelective contributions.

SIMPLE plans can only be maintained on a calendar-year basis.

A SIMPLE plan can be set up in either of the following ways.

- Using SIMPLE IRAs (SIMPLE IRA plan).
- As part of a 401(k) plan (SIMPLE 401(k) plan).

See Publication 560 for information on SIMPLE 401(k) plans.


*Many financial institutions will help you set up a SIMPLE plan.*

## SIMPLE IRA Plan

A SIMPLE IRA plan is a retirement plan that uses SIMPLE IRAs for each eligible employee. Under a SIMPLE IRA plan, a SIMPLE IRA must be set up for each eligible employee. For the definition of an eligible employee, see *Who Can Participate in a SIMPLE IRA Plan?,* next.

### Who Can Set Up a SIMPLE IRA Plan?

You can set up a SIMPLE IRA plan if you meet both the following requirements.

- You meet the employee limit.
- You do not maintain another qualified plan unless the other plan is for collective bargaining employees.

**Employee limit.** You can set up a SIMPLE IRA plan only if you had 100 or fewer employees who received $5,000 or more in compensation from you for the preceding year. Under this rule, you must take into account all employees employed at any time during the calendar year regardless of whether they are eligible to participate. Employees include self-employed individuals who received earned income and leased employees.

Once you set up a SIMPLE IRA plan, you must continue to meet the 100-employee limit each year you maintain the plan.

***Grace period for employers who cease to meet the 100-employee limit.*** If you maintain the SIMPLE IRA plan for at least 1 year and you cease to meet the 100-employee limit in a later year, you will be treated as meeting it for the 2 calendar years immediately following the calendar year for which you last met it.

A different rule applies if you do not meet the 100-employee limit because of an acquisition, disposition, or similar transaction. Under this rule, the SIMPLE IRA plan will be treated as meeting the 100-employee limit for the year of the transaction and the 2 following years if both the following conditions are satisfied.

- Coverage under the plan has not significantly changed during the grace period.
- The SIMPLE IRA plan would have continued to qualify after the transaction if you had remained a separate employer.


*The grace period for acquisitions, dispositions, and similar transactions also applies if, because of these types of transactions, you do not meet the rules explained under* Other qualified plan, *next, or* Who Can Participate in a SIMPLE IRA Plan?, *later.*

**Other qualified plan.** The SIMPLE IRA plan generally must be the only retirement plan to which you make contributions, or benefits accrue, for service in any year beginning with the year the SIMPLE IRA plan becomes effective.

***Exception.*** If you maintain a qualified plan for collective bargaining employees, you are permitted to maintain a SIMPLE IRA plan for other employees.

### Who Can Participate in a SIMPLE IRA Plan?

**Eligible employee.** Any employee who received at least $5,000 in compensation during any 2 years preceding the current calendar year and is reasonably expected to receive at least $5,000 during the current calendar year is eligible to participate. The term employee includes a self-employed individual who received earned income.

You can use less restrictive eligibility requirements (but not more restrictive ones) by eliminating or reducing the prior year compensation requirements, the current year compensation requirements, or both. For example, you can allow participation for employees who received at least $3,000 in compensation during any preceding calendar year. However, you cannot impose any other conditions on participating in a SIMPLE IRA plan.

**Excludable employees.** The following employees do not need to be covered under a SIMPLE IRA plan.

- Employees who are covered by a union agreement and whose retirement benefits were bargained for in good faith by the employees' union and you.
- Nonresident alien employees who have received no U.S. source wages, salaries, or other personal services compensation from you.

**Compensation.** Compensation for employees is the total wages, tips, and other compensation from the employer subject to federal income tax withholding and the amounts paid for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority. Compensation also includes the employee's salary reduction contributions made under this plan and, if applicable, elective deferrals under a section 401(k) plan, a SARSEP, or a section 403(b) annuity contract and compensation deferred under a section 457 plan required to be reported by the employer on Form W-2. If you are self-employed, compensation is your net earnings from self-employment (line 4, Section A, or line 6, Section B, of Schedule SE (Form 1040)) before subtracting any contributions made to the SIMPLE IRA plan for yourself.

### How To Set Up a SIMPLE IRA Plan

You can use Form 5304-SIMPLE or Form 5305-SIMPLE to set up a SIMPLE IRA plan. Each form is a model savings incentive match plan for employees (SIMPLE) plan document. Which form you use depends on whether you select a financial institution or your employees select the institution that will receive the contributions.

Use Form 5304-SIMPLE if you allow each plan participant to select the financial institution for receiving his or her SIMPLE IRA plan contributions. Use Form 5305-SIMPLE if you require that all contributions under the SIMPLE IRA plan be deposited initially at a designated financial institution.

The SIMPLE IRA plan is adopted when you (and the designated financial institution, if any) have completed all appropriate boxes and blanks on the form and you have signed it. Keep the original form. Do not file it with the IRS.

**Other uses of the forms.** If you set up a SIMPLE IRA plan using Form 5304-SIMPLE or Form 5305-SIMPLE, you can use the form to satisfy other requirements, including the following.

- Meeting employer notification requirements for the SIMPLE IRA plan. Page 3 of Form 5304-SIMPLE and Page 3 of Form 5305-SIMPLE contain a *Model Notification*

*to Eligible Employees* that provides the necessary information to the employee.

- Maintaining the SIMPLE IRA plan records and proving you set up a SIMPLE IRA plan for employees.

**Deadline for setting up a SIMPLE IRA plan.** You can set up a SIMPLE IRA plan effective on any date from January 1 thru October 1 of a year, provided you did not previously maintain a SIMPLE IRA plan. This requirement does not apply if you are a new employer that comes into existence after October 1 of the year the SIMPLE IRA plan is set up and you set up a SIMPLE IRA plan as soon as administratively feasible after your business comes into existence. If you previously maintained a SIMPLE IRA plan, you can set up a SIMPLE IRA plan effective only on January 1 of a year. A SIMPLE IRA plan cannot have an effective date that is before the date you actually adopt the plan.

**Setting up a SIMPLE IRA.** SIMPLE IRAs are the individual retirement accounts or annuities into which the contributions are deposited. A SIMPLE IRA must be set up for each eligible employee. Forms 5305-S, SIMPLE Individual Retirement Trust Account, and 5305-SA, SIMPLE Individual Retirement Custodial Account, are model trust and custodial account documents the participant and the trustee (or custodian) can use for this purpose.

A SIMPLE IRA cannot be designated as a Roth IRA. Contributions to a SIMPLE IRA will not affect the amount an individual can contribute to a Roth IRA.

***Deadline for setting up a SIMPLE IRA.*** A SIMPLE IRA must be set up for an employee before the first date by which a contribution is required to be deposited into the employee's IRA. See *Time limits for contributing funds*, later, under *Contribution Limits.*

## Notification Requirement

If you adopt a SIMPLE IRA plan, you must notify each employee of the following information before the beginning of the election period.

- The employee's opportunity to make or change a salary reduction choice under a SIMPLE IRA plan.
- Your choice to make either reduced matching contributions or nonelective contributions (discussed later).
- A summary description and the location of the plan. The financial institution should provide you with this information.
- Written notice that his or her balance can be transferred without cost or penalty if you use a designated financial institution.

**Election period.** The election period is generally the 60-day period immediately preceding January 1 of a calendar year (November 2 to December 31 of the preceding calendar year). However, the dates of this period are modified if you set up a SIMPLE IRA plan in mid-year (for example, on July 1) or if the 60-day period falls before the first day an employee becomes eligible to participate in the SIMPLE IRA plan.

A SIMPLE IRA plan can provide longer periods for permitting employees to enter into salary reduction agreements or to modify prior agreements. For example, a SIMPLE IRA plan can provide a 90-day election period instead of the 60-day period. Similarly, in addition to the 60-day period, a SIMPLE IRA plan can provide quarterly election periods during the 30 days before each calendar quarter, other than the first quarter of each year.

## Contribution Limits

Contributions are made up of salary reduction contributions and employer contributions. You, as the employer, must make either matching contributions or nonelective contributions, discussed later. No other contributions can be made to the SIMPLE IRA plan. These contributions, which you can deduct, must be made timely. See *Time limits for contributing funds,* later.

**Salary reduction contributions.** The amount the employee chooses to have you contribute to a SIMPLE IRA on his or her behalf cannot be more than $10,000 for 2005. The $10,000 figure is subject to cost-of-living increases after December 31, 2005. These contributions must be expressed as a percentage of the employee's compensation unless you permit the employee to express them as a specific dollar amount. You cannot place restrictions on the contribution amount (such as limiting the contribution percentage), except to comply with the $10,000 limit.

If an employee is a participant in any other employer plan during the year and has elective salary reductions or deferred compensation under those plans, the salary reduction contributions under a SIMPLE IRA plan also are elective deferrals that count toward the overall $14,000 annual limit on exclusion of salary reductions and other elective deferrals.

***Catch-up contributions.*** A SIMPLE plan can permit participants who are age 50 or older at the end of the calendar year to make catch-up contributions. The catch-up contribution limit for 2005 is $2,000. This limit increases to $2,500 in 2006. The limit is subject to cost-of-living increases after 2006. The catch-up contributions a participant can make for a year cannot exceed the lesser of the following amounts.

- The catch-up contribution limit.
- The excess of the participant's compensation over the elective deferrals that are not catch-up contributions.

**Employer matching contributions.** You generally are required to match each employee's salary reduction contributions (other than catch-up contributions) on a dollar-for-dollar basis up to 3% of the employee's compensation. This requirement does not apply if you make nonelective contributions as discussed later.

***Example.*** In 2005, your employee, John Rose, earned $25,000 and chose to defer 5% of his salary. You make a 3% matching contribution. The total contribution you can make for John is $2,000, figured as follows.

| | |
|---|---|
| Salary reduction contributions ($25,000 × .05) | $1,250 |
| Employer matching contribution ($25,000 × .03) | 750 |
| **Total contributions** | **$2,000** |

***Lower percentage.*** If you choose a matching contribution less than 3%, the percentage must be at least 1%. You must notify the employees of the lower match within a reasonable period of time before the 60-day election period (discussed earlier) for the calendar year. You cannot choose a percentage less than 3% for more than 2 years during the 5-year period that ends with (and includes) the year for which the choice is effective.

**Nonelective contributions.** Instead of matching contributions, you can choose to make nonelective contributions of 2% of compensation on behalf of each eligible employee who has at least $5,000 of compensation (or some lower amount of compensation that you select) from you for the year. If you make this choice, you must make nonelective contributions whether or not the employee chooses to make salary reduction contributions. Only $210,000 of the employee's compensation can be taken into account to figure the contribution limit.

If you choose this 2% contribution formula, you must notify the employees within a reasonable period of time before the 60-day election period (discussed earlier) for the calendar year.

***Example 1.*** In 2005, your employee, Jane Wood, earned $36,000 and chose to have you contribute 10% of her salary. You make a 2% nonelective contribution. Both of you are under age 50. The total contributions you can make for her are $4,320, figured as follows.

| | |
|---|---|
| Salary reduction contributions ($36,000 × .10) | $3,600 |
| 2% nonelective contributions ($36,000 × .02) | 720 |
| **Total contributions** | **$4,320** |

***Example 2.*** Using the same facts as in *Example 1,* above, the maximum contribution you can make for Jane if she earned $75,000 is $11,500, figured as follows.

| | |
|---|---|
| Salary reduction contributions (maximum amount) | $10,000 |
| 2% nonelective contributions ($75,000 × .02) | 1,500 |
| **Total contributions** | **$11,500** |

**Time limits for contributing funds.** You must make the salary reduction contributions to the SIMPLE IRA within 30 days after the end of the month in which the amounts would otherwise have been payable to the employee in cash. You must make matching contributions or nonelective contributions by the due date (including extensions) for filing your federal income tax return for the year.

## When To Deduct Contributions

You can deduct SIMPLE IRA contributions in the tax year with or within which the calendar year for which contributions were made ends. You can deduct contributions for a particular tax year if they are made for that tax year and are made

by the due date (including extensions) of your federal income tax return for that year.

***Example 1.*** Your tax year is the fiscal year ending June 30. Contributions under a SIMPLE IRA plan for the calendar year 2005 (including contributions made in 2005 before July 1, 2005) are deductible in the tax year ending June 30, 2006.

***Example 2.*** You are a sole proprietor whose tax year is the calendar year. Contributions under a SIMPLE IRA plan for the calendar year 2005 (including contributions made in 2006 by April 17, 2006) are deductible in the 2005 tax year.

### Where To Deduct Contributions

Deduct contributions you make for your common-law employees on your tax return. For example, sole proprietors deduct them on Schedule C (Form 1040) or Schedule F (Form 1040), partnerships deduct them on Form 1065, and corporations deduct them on Form 1120, Form 1120-A, or Form 1120S.

Sole proprietors and partners deduct contributions for themselves on line 28 of Form 1040. (If you are a partner, contributions for yourself are shown on the Schedule K-1 (Form 1065) you receive from the partnership).

### Tax Treatment of Contributions

You can deduct your contributions and your employees can exclude these contributions from their gross income. SIMPLE IRA contributions are not subject to federal income tax withholding. However, salary reduction contributions are subject to social security, Medicare, and federal unemployment (FUTA) taxes. Matching and nonelective contributions are not subject to these taxes.

***Reporting on Form W-2.*** Do not include SIMPLE IRA contributions in the "Wages, tips, other compensation" box of Form W-2. However, salary reduction contributions must be included in the boxes for social security wages and Medicare wages. Also include the proper code in Box 12. For more information, see the instructions for Forms W-2 and W-3.

### Distributions (Withdrawals)

Distributions from a SIMPLE IRA are subject to IRA rules and generally are includible in income for the year received. Tax-free rollovers can be made from one SIMPLE IRA into another SIMPLE IRA. A rollover from a SIMPLE IRA to a non-SIMPLE IRA can be made tax free only after a 2-year participation in the SIMPLE IRA plan.

Early withdrawals generally are subject to a 10% additional tax. However, the additional tax is increased to 25% if funds are withdrawn within 2 years of beginning participation.

**More information.** See Publication 590 for information about IRA rules, including those on the tax treatment of distributions, rollovers, required distributions, and income tax withholding.

### More Information on SIMPLE IRA Plans

If you need more help to set up and maintain a SIMPLE IRA plan, see the following IRS notice and revenue procedure.

**Notice 98-4.** This notice contains questions and answers about the implementation and operation of SIMPLE IRA plans, including the election and notice requirements for these plans. Notice 98-4 is in Cumulative Bulletin 1998-1.

**Revenue Procedure 97-29.** This revenue procedure provides guidance to drafters of prototype SIMPLE IRAs on obtaining opinion letters. Revenue Procedure 97-29 is in Cumulative Bulletin 1997-1.

## Qualified Plan

A qualified retirement plan is a written plan you can set up for the exclusive benefit of your employees and their beneficiaries. It is sometimes called a Keogh or H.R. 10 plan.

You, or you and your employees, can make contributions to the plan. If your plan meets the qualification requirements, you generally can deduct your contributions to the plan. For more information, see Publication 560.

Your employees generally are not taxed on your contributions or increases in the plan's assets until they are distributed. However, certain loans made from qualified plans are treated as taxable distributions. For more information, see Publication 575.

**Qualification requirements.** To be a qualified plan, the plan must meet many requirements. They include requirements that determine the following.

- Who must be covered by the plan.
- How contributions to the plan are to be invested.
- How contributions to the plan and benefits under the plan are to be determined.
- How much of an employee's interest in the plan must be guaranteed (vested).

For more information, see Publication 560.

**More than one job.** If you are self-employed and also work for someone else, you can participate in retirement plans for both jobs. Generally, your participation in a retirement plan for one job does not affect your participation in a plan for the other job. However, if you have an IRA, you may not be allowed to deduct part or all of your IRA contributions. See Publication 590.

## Kinds of Qualified Plans

There are two basic kinds of qualified retirement plans: defined contribution plans and defined benefit plans.

### Defined Contribution Plan

This plan provides for a separate account for each person covered by the plan. Benefits are based only on amounts contributed to or allocated to each account.

There are two types of defined contribution plans: profit-sharing and money purchase pension.

**Profit-sharing plan.** Generally, this plan lets your employees or their beneficiaries share in the profits of your business. The plan must have a definite formula for allocating the contribution among the participating employees and for distributing the accumulated funds in the plan.

**Money purchase pension plan.** Under this plan, contributions are fixed and are not based on your business profits. For example, if the plan requires contributions of 10% of each participating employee's compensation, regardless of whether you have a profit, generally the plan is a money purchase pension plan.

### Defined Benefit Plan

This is any plan that is not a defined contribution plan. In general, contributions to a qualified defined benefit plan are based on what is needed to provide definitely determinable benefits to plan participants. Your contributions to the plan are based on actuarial assumptions. Generally, you will need continuing professional help to administer a defined benefit plan.

## Setting Up a Plan

You must adopt a written plan. The plan can be an IRS-approved master or prototype plan offered by a sponsoring organization. Or it can be an individually designed plan.

**Master or prototype plans.** The following sponsoring organizations generally can provide IRS-approved master or prototype plans.

- Trade or professional organizations.
- Banks (including savings and loan associations and federally insured credit unions).
- Insurance companies.
- Mutual funds.

Adoption of a master or prototype plan does not mean your plan is automatically qualified. It still must meet all the qualification requirements stated in the law.

**Individually designed plan.** If you prefer, you can set up an individually designed plan to meet specific needs. Although advance IRS approval is not required, you can apply for approval by paying a fee and requesting a determination letter. You may need professional help with this. Revenue Procedure 2005-6 in Internal Revenue Bulletin 2005-1 may help you decide whether to apply for approval.

## Deduction Limits

The deduction limit for contributions to a qualified plan depends on the kind of plan you have.


*In figuring the deduction for contributions to these plans, you cannot take into account any contributions or benefits that are more than the limits discussed under* Limits on Contributions and Benefits *in Publication 560. However, your deduction can be as much as the plan's unfunded current liability.*

Worksheet 3-B. **Deduction Worksheet for Self-Employed**

**Step 1**
Enter your net profit from line 31, Schedule C (Form 1040); line 3, Schedule C-EZ (Form 1040); line 36, Schedule F (Form 1040); or box 14, code A*, Schedule K-1 (Form 1065) . . . . . _____
*General partners should reduce this amount by the same additional expenses subtracted from box 14, code A to determine the amount on line 1 or 2 of Schedule SE

**Step 2**
Enter your deduction for self-employment tax from line 27, Form 1040 . . . . . _____

**Step 3**
Net earnings from self-employment. Subtract step 2 from step 1 . . . . . _____

**Step 4**
Enter your rate from the *Worksheet 3-A* . . . . . _____

**Step 5**
Multiply step 3 by step 4 . . . . . _____

**Step 6**
Multiply $210,000 by your plan contribution rate (not the reduced rate) . . . . . _____

**Step 7**
Enter the **smaller** of step 5 or step 6 . . . . . _____

**Step 8**
Contribution dollar limit . . . . . $42,000
- **If you made any elective deferrals, go to step 9.**
- **Otherwise, skip steps 9 through 18 and enter the smaller of step 7 or step 8 on step 19.**

**Step 9**
Enter your allowable elective deferrals made during 2005. Do not enter more than $14,000 . . . . . _____

**Step 10**
Subtract step 9 from step 8 . . . . . _____

**Step 11**
Subtract step 9 from step 3 . . . . . _____

**Step 12**
Enter one-half of step 11 . . . . . _____

**Step 13**
Enter the **smallest** of step 7, 10, or 12 . . . . . _____

**Step 14**
Subtract step 13 from step 3 . . . . . _____

**Step 15**
Enter the **smaller** of step 9 or step 14 . . . . . _____
- **If you made catch-up contributions, go to step 16.**
- **Otherwise, skip steps 16 through 18 and go to step 19.**

**Step 16**
Subtract step 15 from step 14 . . . . . _____

**Step 17**
Enter your catch-up contributions, if any. Do not enter more than $4,000 . . . . . _____

**Step 18**
Enter the **smaller** of step 16 or step 17 . . . . . _____

**Step 19**
Add steps 13, 15, and 18. This is your ***maximum deductible contribution*** . . . . _____
**Next:** Enter this amount on line 28, Form 1040.

**Defined contribution plans.** The deduction for contributions to a defined contribution plan (profit sharing plan or money purchase pension plan) cannot be more than 25% of the compensation paid (or accrued) during the year to the eligible employees participating in the plan. You must reduce this limit in figuring the deduction for contributions you make for your own account. See *Deduction of contributions for yourself,* later.

When figuring the deduction limit, the following rules apply.

- Elective deferrals (discussed in Publication 560) are not subject to deduction limits.
- Compensation includes elective deferrals.
- The maximum compensation that can be taken into account for each employee is $210,000.

**Defined benefit plans.** An actuary must figure the deduction for contributions to a defined benefit plan because it is based on actuarial assumptions and computations.

**Deduction of contributions for yourself.** To take a deduction for contributions you make to a plan for yourself, you must have net earnings from the trade or business for which the plan was set up.

***Limit on deduction.*** If the qualified plan is a defined contribution plan, your deduction for yourself is limited to the lesser of $42,000 or 20% of your net earnings.

***Net earnings.*** Your net earnings must be from self-employment in a trade or business in which your personal services are a material income-producing factor. Your net earnings do not include items excluded from income (or deductions related to that income), other than foreign earned income and foreign housing cost amounts.

Your net earnings are your business gross income minus the allowable business deductions from that business. Allowable business deductions include contributions to SEP and qualified plans for common-law employees and the deduction for one-half of your self-employment tax.

Net earnings include a partner's distributive share of partnership income or loss (other than separately stated items such as capital gains and losses) and any guaranteed payments. If you are a limited partner, net earnings include only guaranteed payments for services rendered to or for the partnership. For more information, see *Partnership Income or Loss* under *Figuring Earnings Subject to Self-Employment Tax* in Publication 533.

Net earnings do not include income passed through to shareholders of S corporations.

***Adjustments.*** You must reduce your net earnings by the deduction for one-half of your self-employment tax. Also, net earnings must be reduced by the deduction for contributions you make for yourself. This reduction is made indirectly, as explained next.

***Net earnings reduced by adjusting contribution rate.*** You must reduce net earnings by your deduction for contributions for yourself. The deduction and the net earnings depend on each other. You make the adjustment indirectly by reducing the contribution rate called for in the plan and using the reduced rate to figure your maximum deduction for contributions for yourself.

***Annual compensation limit.*** You generally cannot take into account more than $210,000 of your compensation in figuring your contribution to a defined contribution plan.

## Figuring Your Deduction

Use the following worksheet to find the reduced contribution rate for yourself. Make no reduction to the contribution rate for any common-law employees.

Worksheet 3-A. **Rate Worksheet for Self-Employed**

| | |
|---|---|
| 1) Plan contribution rate as a decimal (for example, 10½% = .105) | _____ |
| 2) Rate in line 1 plus 1 (for example, .105 + 1 = 1.105) | _____ |
| 3) Self-employed rate as a decimal rounded to at least 3 decimal places (line 1 ÷ line 2) | _____ |

After you have figured your self-employed rate, you can figure your maximum deduction for contributions for yourself by completing *Worksheet 3-B*.

An *Example* of how to complete the worksheets follows.

## Example

You are a sole proprietor with no employees. The terms of your plan provide that you contribute 8½% (.085) of your compensation (defined earlier) to your plan. Your net profit from line 31, Schedule C (Form 1040) is $200,000. You have no elective deferrals or catch-up contributions. Your self-employment tax deduction on line 27 of Form 1040 is $8,258. You figure your self-em-

Worksheet 3-B. **Deduction Worksheet for Self-Employed — Illustrated**

| | |
|---|---|
| **Step 1** | |
| Enter your net profit from line 31, Schedule C (Form 1040); line 3, Schedule C-EZ (Form 1040); line 36, Schedule F (Form 1040); or box 14, code A*, Schedule K-1 (Form 1065) | $200,000 |
| *General partners should reduce this amount by the same additional expenses subtracted from box 14, code A to determine the amount on line 1 or 2 of Schedule SE | |
| **Step 2** | |
| Enter your deduction for self-employment tax from line 27, Form 1040 | 8,258 |
| **Step 3** | |
| Net earnings from self-employment. Subtract step 2 from step 1 | 191,742 |
| **Step 4** | |
| Enter your rate from *Worksheet 3-A* | 0.078 |
| **Step 5** | |
| Multiply step 3 by step 4 | 14,956 |
| **Step 6** | |
| Multiply $210,000 by your plan contribution rate (not the reduced rate) | 17,850 |
| **Step 7** | |
| Enter the **smaller** of step 5 or step 6 | 14,956 |
| **Step 8** | |
| Contribution dollar limit | $42,000 |
| • **If you made any elective deferrals, go to step 9.** | |
| • **Otherwise, skip steps 9 through 18 and enter the smaller of step 7 or step 8 on step 19.** | |
| **Step 9** | |
| Enter your allowable elective deferrals made during 2005. Do not enter more than $14,000 | N/A |
| **Step 10** | |
| Subtract step 9 from step 8 | |
| **Step 11** | |
| Subtract step 9 from step 3 | |
| **Step 12** | |
| Enter one-half of step 11 | |
| **Step 13** | |
| Enter the **smallest** of step 7, 10, or 12 | |
| **Step 14** | |
| Subtract step 13 from step 3 | |
| **Step 15** | |
| Enter the **smaller** of step 9 or step 14 | |
| • **If you made catch-up contributions, go to step 16.** | |
| • **Otherwise, skip steps 16 through 18 and go to step 19.** | |
| **Step 16** | |
| Subtract step 15 from step 14 | |
| **Step 17** | |
| Enter your catch-up contributions, if any. Do not enter more than $4,000 | |
| **Step 18** | |
| Enter the **smaller** of step 16 or step 17 | |
| **Step 19** | |
| Add steps 13, 15, and 18. This is your ***maximum deductible contribution*** | $14,956 |
| **Next:** Enter this amount on line 28, Form 1040. | |

ployed rate and maximum deduction for employer contributions you made for yourself as shown in illustrated *Worksheet 3-A* and *Worksheet 3-B*.

Worksheet 3-A. **Rate Worksheet for Self-Employed — Illustrated**

| | |
|---|---|
| 1) Plan contribution rate as a decimal (for example, 10½% = .105) | 0.085 |
| 2) Rate in line 1 plus 1 (for example, .105 + 1 = 1.105) | 1.085 |
| 3) Self-employed rate as a decimal rounded to at least 3 decimal places (line 1 ÷ line 2) | 0.078 |

**When to make contributions.** To take a deduction for contributions for a particular year, you must make the contributions not later than the due date (generally April 15 for calendar year taxpayers), plus extensions, of your tax return for that year.

**More information.** See Publication 560 for more information on retirement plans for small business owners, including the self-employed. Publication 560 also discusses the reporting forms that must be filed for these plans.

## Individual Retirement Arrangement (IRA)

An individual retirement arrangement (IRA) is a personal savings plan that allows you to set aside money for your retirement. You may be able to deduct your contributions, depending on the type of IRA and your circumstances. Generally, amounts in an IRA, including earnings and gains, are not taxed until they are distributed. In certain cases, your earnings and gains may not be taxed at all if they are distributed according to the rules. For more information on IRAs, see Publication 590.

# 4.

# Rent Expense

## Introduction

This chapter discusses the tax treatment of rent or lease payments you make for property you use in your business but do not own. It also discusses how to treat other kinds of payments you make that are related to your use of this property. These include payments you make for taxes on the property, improvements to the property, and getting a lease. There is a discussion about capitalizing (including in the cost of property) certain rent expenses at the end of the chapter.

### Topics

This chapter discusses:

- The definition of rent
- Taxes on leased property
- The cost of getting a lease
- Improvements by the lessee
- Capitalizing rent expenses

See chapter 14 for information about getting publications and forms.

## Rent

Rent is any amount you pay for the use of property you do not own. In general, you can deduct rent as an expense only if the rent is for property you use in your trade or business. If you have or will receive equity in or title to the property, the rent is not deductible.

**Unreasonable rent.** You cannot take a rental deduction for unreasonable rent. Ordinarily, the issue of reasonableness arises only if you and the lessor are related. Rent paid to a related person is reasonable if it is the same amount you would pay to a stranger for use of the same property. Rent is not unreasonable just because it is figured as a percentage of gross sales. For examples of related persons, see *Related Persons* in chapter 12.

**Rent on your home.** If you rent your home and use part of it as your place of business, you may be able to deduct the rent you pay for that part. You must meet the requirements for business use of your home. For more information, see *Business use of your home* in chapter 1.

**Rent paid in advance.** Generally, rent paid in your trade or business is deductible in the year paid or accrued. If you pay rent in advance, you can deduct only the amount that applies to your

use of the rented property during the tax year. You can deduct the rest of your payment only over the period to which it applies.

***Example 1.*** You leased a building for 5 years beginning July 1. Your rent is $12,000 per year. You paid the first year's rent ($12,000) on June 30. You can deduct only $6,000 ($^6/_{12} \times$ $12,000) for the rent that applies to the first year.

***Example 2.*** Last January you leased property for 3 years for $6,000 a year. You paid the full $18,000 ($3 \times$ $6,000) during the first year of the lease. Each year you can deduct only $6,000, the part of the lease that applies to that year.

**Canceling a lease.** You generally can deduct as rent an amount you pay to cancel a business lease.

**Lease or purchase.** There may be instances in which you must determine whether your payments are for rent or for the purchase of the property. You must first determine whether your agreement is a lease or a conditional sales contract. Payments made under a conditional sales contract are not deductible as rent expense.

***Conditional sales contract.*** Whether an agreement is a conditional sales contract depends on the intent of the parties. Determine intent based on the provisions of the agreement and the facts and circumstances that exist when you make the agreement. No single test, or special combination of tests, always applies. However, in general, an agreement may be considered a conditional sales contract rather than a lease if any of the following is true.

- The agreement applies part of each payment toward an equity interest you will receive.
- You get title to the property after you make a stated amount of required payments.
- The amount you must pay to use the property for a short time is a large part of the amount you would pay to get title to the property.
- You pay much more than the current fair rental value of the property.
- You have an option to buy the property at a nominal price compared to the value of the property when you may exercise the option. Determine this value when you make the agreement.
- You have an option to buy the property at a nominal price compared to the total amount you have to pay under the agreement.
- The agreement designates part of the payments as interest, or that part is easy to recognize as interest.

***Leveraged leases.*** Leveraged lease transactions may not be considered leases. Leveraged leases generally involve three parties: a lessor, a lessee, and a lender to the lessor. Usually the lease term covers a large part of the useful life of the leased property, and the lessee's payments to the lessor are enough to cover the lessor's payments to the lender.

If you plan to take part in what appears to be a leveraged lease, you may want to get an advance ruling. Revenue Procedure 2001-28 on page 1156 of Internal Revenue Bulletin 2001-19 contains the guidelines the IRS will use to determine if a leveraged lease is a lease for federal income tax purposes. Revenue Procedure 2001-29 on page 1160 of the same Internal Revenue Bulletin provides the information required to be furnished in a request for an advance ruling on a leveraged lease transaction. Internal Revenue Bulletin 2001-19 is available at *www.irs.gov/pub/irs-irbs/irb01-19.pdf.*

In general, Revenue Procedure 2001-28 provides that, for advance ruling purposes only, the IRS will consider the lessor in a leveraged lease transaction to be the owner of the property and the transaction to be a valid lease if all the factors in the revenue procedure are met, including the following.

- The lessor must maintain a minimum unconditional "at risk" equity investment in the property (at least 20% of the cost of the property) during the entire lease term.
- The lessee may not have a contractual right to buy the property from the lessor at less than fair market value when the right is exercised.
- The lessee may not invest in the property, except as provided by Revenue Procedure 2001-28.
- The lessee may not lend any money to the lessor to buy the property or guarantee the loan used by the lessor to buy the property.
- The lessor must show that it expects to receive a profit apart from the tax deductions, allowances, credits, and other tax attributes.

The IRS may charge you a user fee for issuing a tax ruling. For more information, see Revenue Procedure 2006-1, on page 1 of Internal Revenue Bulletin No. 2006-1 at *www.irs.gov/pub/irs-irbs/irb06-01.pdf*.

***Leveraged leases of limited-use property.*** The IRS will not issue advance rulings on leveraged leases of so-called limited-use property. Limited-use property is property not expected to be either useful to or usable by a lessor at the end of the lease term except for continued leasing or transfer to a lessee. See Revenue Procedure 2001-28 for examples of limited-use property and property that is not limited-use property.

**Leases over $250,000.** Special rules are provided for certain leases of tangible property. The rules apply if the lease calls for total payments of more than $250,000 and any of the following apply.

- Rents increase during the lease.
- Rents decrease during the lease.
- Rents are deferred (rent is payable after the end of the calendar year following the calendar year in which the use occurs and the rent is allocated).
- Rents are prepaid (rent is payable before the end of the calendar year preceding the calendar year in which the use occurs and the rent is allocated).

These rules do not apply if your lease specifies equal amounts of rent for each month in the lease term and all rent payments are due in the calendar year to which the rent relates (or in the preceding or following calendar year).

Generally, if the special rules apply, you must use an accrual method of accounting (and time value of money principles) for your rental expenses, regardless of your overall method of accounting. In addition, in certain cases in which the IRS has determined that a lease was designed to achieve tax avoidance, you must take rent and stated or imputed interest into account under a constant rental accrual method in which the rent is treated as accruing ratably over the entire lease term. For details, see section 467 of the Internal Revenue Code.

# Taxes on Leased Property

If you lease business property, you can deduct as additional rent any taxes you have to pay to or for the lessor. When you can deduct these taxes as additional rent depends on your accounting method.

**Cash method.** If you use the cash method of accounting, you can deduct the taxes as additional rent only for the tax year in which you pay them.

**Accrual method.** If you use an accrual method of accounting, you can deduct taxes as additional rent for the tax year in which you can determine all the following.

- That you have a liability for taxes on the leased property.
- How much the liability is.
- That economic performance occurred.

The liability and amount of taxes are determined by state or local law and the lease agreement. Economic performance occurs as you use the property.

***Example 1.*** Oak Corporation is a calendar year taxpayer that uses an accrual method of accounting. Oak leases land for use in its business. Under state law, owners of real property become liable (incur a lien on the property) for real estate taxes for the year on January 1 of that year. However, they do not have to pay these taxes until July 1 of the next year (18 months later) when tax bills are issued. Under the terms of the lease, Oak becomes liable for the real estate taxes in the later year when the tax bills are issued. If the lease ends before the tax bill for a year is issued, Oak is not liable for the taxes for that year.

Oak cannot deduct the real estate taxes as rent until the tax bill is issued. This is when Oak's liability under the lease becomes fixed.

***Example 2.*** The facts are the same as in *Example 1* except that, according to the terms of the lease, Oak becomes liable for the real estate taxes when the owner of the property becomes liable for them. As a result, Oak will deduct the real estate taxes as rent on its tax return for the earlier year. This is the year in which Oak's liability under the lease becomes fixed.

## Cost of Getting a Lease

You may either enter into a new lease with the lessor of the property or get an existing lease from another lessee. Very often when you get an existing lease from another lessee, you must pay the previous lessee money to get the lease, besides having to pay the rent on the lease.

If you get an existing lease on property or equipment for your business, you generally must amortize any amount you pay to get that lease over the remaining term of the lease. For example, if you pay $10,000 to get a lease and there are 10 years remaining on the lease with no option to renew, you can deduct $1,000 each year.

The cost of getting an existing lease of tangible property is not subject to the amortization rules for section 197 intangibles discussed in chapter 9.

**Option to renew.** The term of the lease for amortization includes all renewal options plus any other period for which you and the lessor reasonably expect the lease to be renewed. However, this applies only if less than 75% of the cost of getting the lease is for the term remaining on the purchase date (not including any period for which you may choose to renew, extend, or continue the lease). Allocate the lease cost to the original term and any option term based on the facts and circumstances. In some cases, it may be appropriate to make the allocation using a present value computation. For more information, see Regulations section 1.178-1(b)(5).

***Example 1.*** You paid $10,000 to get a lease with 20 years remaining on it and two options to renew for 5 years each. Of this cost, you paid $7,000 for the original lease and $3,000 for the renewal options. Because $7,000 is less than 75% of the total $10,000 cost of the lease (or $7,500), you must amortize the $10,000 over 30 years. That is the remaining life of your present lease plus the periods for renewal.

***Example 2.*** The facts are the same as in *Example 1*, except that you paid $8,000 for the original lease and $2,000 for the renewal options. You can amortize the entire $10,000 over the 20-year remaining life of the original lease. The $8,000 cost of getting the original lease was not less than 75% of the total cost of the lease (or $7,500).

**Cost of a modification agreement.** You may have to pay an additional "rent" amount over part of the lease period to change certain provisions in your lease. You must capitalize these payments and amortize them over the remaining period of the lease. You cannot deduct the payments as additional rent, even if they are described as rent in the agreement.

***Example.*** You are a calendar year taxpayer and sign a 20-year lease to rent part of a building starting on January 1. However, before you occupy it, you decide that you really need less space. The lessor agrees to reduce your rent from $7,000 to $6,000 per year and to release the excess space from the original lease. In exchange, you agree to pay an additional rent amount of $3,000, payable in 60 monthly installments of $50 each.

You must capitalize the $3,000 and amortize it over the 20-year term of the lease. Your amortization deduction each year will be $150 ($3,000 ÷ 20). You cannot deduct the $600 (12 × $50) that you will pay during each of the first 5 years as rent.

**Commissions, bonuses, and fees.** Commissions, bonuses, fees, and other amounts you pay to get a lease on property you use in your business are capital costs. You must amortize these costs over the term of the lease.

**Loss on merchandise and fixtures.** If you sell at a loss merchandise and fixtures that you bought solely to get a lease, the loss is a cost of getting the lease. You must capitalize the loss and amortize it over the remaining term of the lease.

## Improvements by Lessee

If you add buildings or make other permanent improvements to leased property, depreciate the cost of the improvements using the modified accelerated cost recovery system (MACRS). Depreciate the property over its appropriate recovery period. You cannot amortize the cost over the remaining term of the lease.

If you do not keep the improvements when you end the lease, figure your gain or loss based on your adjusted basis in the improvements at that time.

For more information, see the discussion of MACRS in Publication 946, How To Depreciate Property.

**Assignment of a lease.** If a long-term lessee who makes permanent improvements to land later assigns all lease rights to you for money and you pay the rent required by the lease, the amount you pay for the assignment is a capital investment. If the rental value of the leased land increased since the lease began, part of your capital investment is for that increase in the rental value. The rest is for your investment in the permanent improvements.

The part that is for the increased rental value of the land is a cost of getting a lease, and you amortize it over the remaining term of the lease. You can depreciate the part that is for your investment in the improvements over the recovery period of the property as discussed earlier, without regard to the lease term.

## Capitalizing Rent Expenses

Under the uniform capitalization rules, you must capitalize the direct costs and part of the indirect costs for certain production or resale activities. Include these costs in the basis of property you produce or acquire for resale, rather than claiming them as a current deduction. You recover the costs through depreciation, amortization, or cost of goods sold when you use, sell, or otherwise dispose of the property.

Indirect costs include amounts incurred for renting or leasing equipment, facilities, or land.

**Uniform capitalization rules.** You may be subject to the uniform capitalization rules if you do any of the following, unless the property is produced for your use other than in a business or an activity carried on for profit.

1. Produce real property or tangible personal property. For this purpose, tangible personal property includes a film, sound recording, video tape, book, or similar property.
2. Acquire property for resale.

However, these rules do not apply to the following property.

1. Personal property you acquire for resale if your average annual gross receipts are $10 million or less for the 3 prior tax years.
2. Property you produce if you meet either of the following conditions.
   a. Your indirect costs of producing the property are $200,000 or less.
   b. You use the cash method of accounting and do not account for inventories.

***Example 1.*** You rent construction equipment to build a storage facility. You must capitalize as part of the cost of the building the rent you paid for the equipment. You recover your cost by claiming a deduction for depreciation on the building.

***Example 2.*** You rent space in a facility to conduct your business of manufacturing tools. You must include the rent you paid to occupy the facility in the cost of the tools you produce.

**More information.** For more information on these rules, see *Uniform Capitalization Rules* in Publication 538 and the regulations under Internal Revenue Code section 263A.

# 5.

# Interest

## Introduction

This chapter discusses the tax treatment of business interest expense. Business interest expense is an amount charged for the use of money you borrowed for business activities.

### Topics

This chapter discusses:

- Allocation of interest
- Interest you can deduct
- Interest you cannot deduct
- Capitalization of interest
- When to deduct interest

- Below-market loans

## Useful Items

You may want to see:

**Publication**

- ❑ **537** Installment Sales
- ❑ **538** Accounting Periods and Methods
- ❑ **550** Investment Income and Expenses
- ❑ **936** Home Mortgage Interest Deduction

**Form (and Instructions)**

- ❑ **Sch A (Form 1040)** Itemized Deductions
- ❑ **Sch E (Form 1040)** Supplemental Income and Loss
- ❑ **Sch K-1 (Form 1065)** Partner's Share of Income, Deductions, Credits, etc.
- ❑ **Sch K-1 (Form 1120S)** Shareholder's Share of Income, Deductions, Credits, etc.
- ❑ **1098** Mortgage Interest Statement
- ❑ **3115** Application for Change in Accounting Method
- ❑ **4952** Investment Interest Expense Deduction
- ❑ **8582** Passive Activity Loss Limitations

See chapter 14 for information about getting publications and forms.

# Allocation of Interest

The rules for deducting interest vary, depending on whether the loan proceeds are used for business, personal, or investment activities. If you use the proceeds of a loan for more than one type of expense, you must make an allocation to determine the interest for each use of the loan's proceeds.

Allocate your interest expense to the following categories.

- Nonpassive trade or business activity interest
- Passive trade or business activity interest
- Investment interest
- Portfolio interest
- Personal interest

In general, you allocate interest on a loan the same way you allocate the loan proceeds. You allocate loan proceeds by tracing disbursements to specific uses.

TIP *The easiest way to trace disbursements to specific uses is to keep the proceeds of a particular loan separate from any other funds.*

**Secured loan.** The allocation of loan proceeds and the related interest is not generally affected by the use of property that secures the loan.

***Example.*** You secure a loan with property used in your business. You use the loan proceeds to buy an automobile for personal use. You must allocate interest expense on the loan to personal use (purchase of the automobile) even though the loan is secured by business property.

TIP *If the property that secures the loan is your home, you generally do not allocate the loan proceeds or the related interest. The interest is usually deductible as qualified home mortgage interest, regardless of how the loan proceeds are used. For more information, see Publication 936.*

**Allocation period.** The period for which a loan is allocated to a particular use begins on the date the proceeds are used and ends on the earlier of the following dates.

- The date the loan is repaid.
- The date the loan is reallocated to another use.

**Proceeds not disbursed to borrower.** Even if the lender disburses the loan proceeds to a third party, the allocation of the loan is still based on your use of the funds. This applies whether you pay for property, services, or anything else by incurring a loan, or you take property subject to a debt.

**Proceeds deposited in borrower's account.** Treat loan proceeds deposited in an account as property held for investment. It does not matter whether the account pays interest. Any interest you pay on the loan is investment interest expense. If you withdraw the proceeds of the loan, you must reallocate the loan based on the use of the funds.

***Example.*** Connie, a calendar-year taxpayer, borrows $100,000 on January 4 and immediately uses the proceeds to open a checking account. No other amounts are deposited in the account during the year and no part of the loan principal is repaid during the year. On April 1, Connie uses $20,000 from the checking account for a passive activity expenditure. On September 1, Connie uses an additional $40,000 from the account for personal purposes.

Under the interest allocation rules, the entire $100,000 loan is treated as property held for investment for the period from January 4 through March 31. From April 1 through August 31, Connie must treat $20,000 of the loan as used in the passive activity and $80,000 of the loan as property held for investment. From September 1 through December 31, she must treat $40,000 of the loan as used for personal purposes, $20,000 as used in the passive activity, and $40,000 as property held for investment.

***Order of funds spent.*** Generally, you treat loan proceeds deposited in an account as used (spent) before either of the following amounts.

- Any unborrowed amounts held in the same account.
- Any amounts deposited after these loan proceeds.

***Example.*** On January 9, Edith opened a checking account, depositing $500 of the proceeds of Loan A and $1,000 of unborrowed funds. The following table shows the transactions in her account during the tax year.

| Date | Transaction |
|---|---|
| January 9 | $500 proceeds of Loan A and $1,000 unborrowed funds deposited |
| January 13 | $500 proceeds of Loan B deposited |
| February 18 | $800 used for personal purposes |
| February 27 | $700 used for passive activity |
| June 19 | $1,000 proceeds of Loan C deposited |
| November 20 | $800 used for an investment |
| December 18 | $600 used for personal purposes |

Edith treats the $800 used for personal purposes as made from the $500 proceeds of Loan A and $300 of the proceeds of Loan B. She treats the $700 used for a passive activity as made from the remaining $200 proceeds of Loan B and $500 of unborrowed funds. She treats the $800 used for an investment as made entirely from the proceeds of Loan C. She treats the $600 used for personal purposes as made from the remaining $200 proceeds of Loan C and $400 of unborrowed funds.

For the periods during which loan proceeds are held in the account, Edith treats them as property held for investment.

***Payments from checking accounts.*** Generally, you treat a payment from a checking or similar account as made at the time the check is written if you mail or deliver it to the payee within a reasonable period after you write it. You can treat checks written on the same day as written in any order.

***Amounts paid within 30 days.*** If you receive loan proceeds in cash or if the loan proceeds are deposited in an account, you can treat any payment (up to the amount of the proceeds) made from any account you own, or from cash, as made from those proceeds. This applies to any payment made within 30 days before or after the proceeds are received in cash or deposited in your account.

If the loan proceeds are deposited in an account, you can apply this rule even if the rules stated earlier under *Order of funds spent* would otherwise require you to treat the proceeds as used for other purposes. If you apply this rule to any payments, disregard those payments (and the proceeds from which they are made) when applying the rules stated under *Order of funds spent.*

If you received the loan proceeds in cash, you can treat the payment as made on the date you received the cash instead of the date you actually made the payment.

***Example.*** Frank gets a loan of $1,000 on August 4 and receives the proceeds in cash. Frank deposits $1,500 in an account on August 18 and on August 28 writes a check on the account for a passive activity expense. Also, Frank deposits his paycheck, deposits other loan proceeds, and pays his bills during the same period. Regardless of these other transac-

tions, Frank can treat $1,000 of the deposit he made on August 18 as being paid on August 4 from the loan proceeds. In addition, Frank can treat the passive activity expense he paid on August 28 as made from the $1,000 loan proceeds treated as deposited in the account.

***Optional method for determining date of reallocation.*** You can use the following method to determine the date loan proceeds are reallocated to another use. You can treat all payments from loan proceeds in the account during any month as taking place on the later of the following dates.

- The first day of that month.
- The date the loan proceeds are deposited in the account.

However, you can use this optional method only if you treat all payments from the account during the same calendar month in the same way.

***Interest on a separate account.*** If you have an account that contains only loan proceeds and interest earned on the account, you can treat any payment from that account as being made first from the interest. When the interest earned is used up, any remaining payments are from loan proceeds.

***Example.*** You borrowed $20,000 and used the proceeds of this loan to open a new savings account. When the account had earned interest of $867, you withdrew $20,000 for personal purposes. You can treat the withdrawal as coming first from the interest earned on the account, $867, and then from the loan proceeds, $19,133 ($20,000 – $867). All the interest charged on the loan from the time it was deposited in the account until the time of the withdrawal is investment interest expense. The interest charged on the part of the proceeds used for personal purposes ($19,133) from the time you withdrew it until you either repay it or reallocate it to another use is personal interest expense. The interest charged on the loan proceeds you left in the account ($867) continues to be investment interest expense until you either repay it or reallocate it to another use.

**Loan repayment.** When you repay any part of a loan allocated to more than one use, treat it as being repaid in the following order.

1. Personal use.
2. Investments and passive activities (other than those included in (3)).
3. Passive activities in connection with a rental real estate activity in which you actively participate.
4. Former passive activities.
5. Trade or business use and expenses for certain low-income housing projects.

**Line of credit (continuous borrowings).** The following rules apply if you have a line of credit or similar arrangement.

1. Treat all borrowed funds on which interest accrues at the same fixed or variable rate as a single loan.
2. Treat borrowed funds or parts of borrowed funds on which interest accrues at different fixed or variable rates as different loans. Treat these loans as repaid in the order shown on the loan agreement.

**Loan refinancing.** Allocate the replacement loan to the same uses to which the repaid loan was allocated. Make the allocation only to the extent you use the proceeds of the new loan to repay any part of the original loan.

**Debt-financed distribution.** A debt-financed distribution occurs when a partnership or S corporation borrows funds and allocates those funds to distributions made to partners or shareholders. The manner in which you report the interest expense associated with the distributed debt proceeds depends on your use of those proceeds.

***How to report.*** If the proceeds were used in a nonpassive trade or business activity, report the interest on line 28 of Schedule E (Form 1040); enter "interest expense" and the name of the partnership or S corporation in column (a) and the amount in column (h). If the proceeds were used in a passive activity, follow the instructions for Form 8582, Passive Activity Loss Limitations, to determine the amount of interest expense that can be reported on line 28 of Schedule E; enter "interest expense" and the name of the partnership in column (a) and the amount in column (f). If the proceeds were used in an investment activity, enter the interest on Form 4952. If the proceeds are used for personal purposes, the interest is generally not deductible.

# Interest You Can Deduct

You can generally deduct as a business expense all interest you pay or accrue during the tax year on debts related to your trade or business. Interest relates to your trade or business if you use the proceeds of the loan for a trade or business expense. It does not matter what type of property secures the loan. You can deduct interest on a debt only if you meet all the following requirements.

- You are legally liable for that debt.
- Both you and the lender intend that the debt be repaid.
- You and the lender have a true debtor-creditor relationship.

**Partial liability.** If you are liable for part of a business debt, you can deduct only your share of the total interest paid or accrued.

***Example.*** You and your brother borrow money. You are liable for 50% of the note. You use your half of the loan in your business, and you make one-half of the loan payments. You can deduct your half of the total interest payments as a business deduction.

**Mortgage.** Generally, mortgage interest paid or accrued on real estate you own legally or equitably is deductible. However, rather than deducting the interest currently, you may have to add it to the cost basis of the property as explained later under *Capitalization of Interest.*

***Statement.*** If you paid $600 or more of mortgage interest (including certain points) during the year on any one mortgage, you generally will receive a Form 1098 or a similar statement. You will receive the statement if you pay interest to a person (including a financial institution or a cooperative housing corporation) in the course of that person's trade or business. A governmental unit is a person for purposes of furnishing the statement.

If you receive a refund of interest you overpaid in an earlier year, this amount will be reported in box 3 of Form 1098. You cannot deduct this amount. For information on how to report this refund, see *Refunds of interest* later in this chapter.

***Expenses paid to obtain a mortgage.*** Certain expenses you pay to obtain a mortgage cannot be deducted as interest. These expenses, which include mortgage commissions, abstract fees, and recording fees, are capital expenses. If the property mortgaged is business or income-producing property, you can amortize the costs over the life of the mortgage.

***Prepayment penalty.*** If you pay off your mortgage early and pay the lender a penalty for doing this, you can deduct the penalty as interest.

**Interest on employment tax deficiency.** Interest charged on employment taxes assessed on your business is deductible.

**Original issue discount (OID).** OID is a form of interest. A loan (mortgage or other debt) generally has OID when its proceeds are less than its principal amount. The OID is the difference between the stated redemption price at maturity and the issue price of the loan.

A loan's stated redemption price at maturity is the sum of all amounts (principal and interest) payable on it other than qualified stated interest. Qualified stated interest is stated interest that is unconditionally payable in cash or property (other than another loan of the issuer) at least annually over the term of the loan at a single fixed rate.

You generally deduct OID over the term of the loan. Figure the amount to deduct each year using the constant-yield method, unless the OID on the loan is de minimis.

***De minimis OID.*** The OID is de minimis if it is less than one-fourth of 1% (.0025) of the stated redemption price of the loan at maturity multiplied by the number of full years from the date of original issue to maturity (the term of the loan).

If the OID is de minimis, you can choose one of the following ways to figure the amount you can deduct each year.

- On a constant-yield basis over the term of the loan.
- On a straight-line basis over the term of the loan.
- In proportion to stated interest payments.
- In its entirety at maturity of the loan.

You make this choice by deducting the OID in a manner consistent with the method chosen on your timely filed tax return for the tax year in which the loan is issued.

***Example.*** On January 1, 2005, you took out a $100,000 discounted loan and received

$98,500 in proceeds. The loan will mature on January 1, 2015 (a 10-year term), and the $100,000 principal is payable on that date. Interest of $10,000 is payable on January 1 of each year, beginning January 1, 2006. The $1,500 OID on the loan is de minimis because it is less than $2,500 ($100,000 × .0025 × 10). You choose to deduct the OID on a straight-line basis over the term of the loan. Beginning in 2005, you can deduct $150 each year for 10 years.

***Constant-yield method.*** If the OID is not de minimis, you must use the constant-yield method to figure how much you can deduct each year. You figure your deduction for the first year using the following steps.

1. Determine the issue price of the loan. Generally, this equals the proceeds of the loan. If you paid points on the loan (as discussed later), the issue price generally is the difference between the proceeds and the points.
2. Multiply the result in (1) by the yield to maturity.
3. Subtract any qualified stated interest payments from the result in (2). This is the OID you can deduct in the first year.

To figure your deduction in any subsequent year, follow the above steps, except determine the adjusted issue price in step (1). To get the adjusted issue price, add to the issue price any OID previously deducted. Then follow steps (2) and (3) above.

The yield to maturity is generally shown in the literature you receive from your lender. If you do not have this information, consult your lender or tax advisor. In general, the yield to maturity is the discount rate that, when used in computing the present value of all principal and interest payments, produces an amount equal to the principal amount of the loan.

***Example.*** The facts are the same as in the previous example, except that you deduct the OID on a constant yield basis over the term of the loan. The yield to maturity on your loan is 10.2467%, compounded annually. For 2005, you can deduct $93 [($98,500 × .102467) – $10,000]. For 2006, you can deduct $103 [($98,593 × .102467) – $10,000].

***Loan or mortgage ends.*** If your loan or mortgage ends, you may be able to deduct any remaining OID in the tax year in which the loan or mortgage ends. A loan or mortgage may end due to a refinancing, prepayment, foreclosure, or similar event.

CAUTION *If you refinance with the original lender, you generally cannot deduct the remaining OID in the year in which the refinancing occurs, but you may be able to deduct it over the term of the new mortgage or loan. See* Interest paid with funds borrowed from original lender *under* Interest You Cannot Deduct, *later.*

**Points.** The term "points" is used to describe certain charges paid, or treated as paid, by a borrower to obtain a loan or a mortgage. These charges are also called loan origination fees, maximum loan charges, discount points, or premium charges. If any of these charges (points) are solely for the use of money, they are interest.

Because points are prepaid interest, you generally cannot deduct the full amount in the year paid. However, you can choose to fully deduct points in the year paid if you meet certain tests. For exceptions to the general rule, see Publication 936.

The points reduce the issue price of the loan and result in original issue discount, deductible as explained in the preceding discussion.

**Partial payments on a nontax debt.** If you make partial payments on a debt (other than a debt owed the IRS), the payments are applied, in general, first to interest and any remainder to principal. You can deduct only the interest. This rule does not apply when it can be inferred that the borrower and lender understood that a different allocation of the payments would be made.

**Installment purchase.** If you make an installment purchase of business property, the contract between you and the seller generally provides for the payment of interest. If no interest or a low rate of interest is charged under the contract, a portion of the stated principal amount payable under the contract may be recharacterized as interest (unstated interest). The amount recharacterized as interest reduces your basis in the property and increases your interest expense. For more information on installment sales and unstated interest, see Publication 537.

# Interest You Cannot Deduct

Certain interest payments cannot be deducted. In addition, certain other expenses that may seem to be interest are not, and you cannot deduct them as interest.

You cannot currently deduct interest that must be capitalized, and you generally cannot deduct personal interest.

**Interest paid with funds borrowed from original lender.** If you use the cash method of accounting, you cannot deduct interest you pay with funds borrowed from the original lender through a second loan, an advance, or any other arrangement similar to a loan. You can deduct the interest expense once you start making payments on the new loan.

When you make a payment on the new loan, you first apply the payment to interest and then to the principal. All amounts you apply to the interest on the first loan are deductible, along with any interest you pay on the second loan, subject to any limits that apply.

**Capitalized interest.** You cannot currently deduct interest you are required to capitalize under the uniform capitalization rules. See *Capitalization of Interest,* later. In addition, if you buy property and pay interest owed by the seller (for example, by assuming the debt and any interest accrued on the property), you cannot deduct the interest. Add this interest to the basis of the property.

**Commitment fees or standby charges.** Fees you incur to have business funds available on a standby basis, but not for the actual use of the funds, are not deductible as interest payments. You may be able to deduct them as business expenses.

If the funds are for inventory or certain property used in your business, the fees are indirect costs and you generally must capitalize them under the uniform capitalization rules. See *Capitalization of Interest,* later.

**Interest on income tax.** Interest charged on income tax assessed on your individual income tax return is not a business deduction even though the tax due is related to income from your trade or business. Treat this interest as a business deduction only in figuring a net operating loss deduction.

***Penalties.*** Penalties on underpaid deficiencies and underpaid estimated tax are not interest. You cannot deduct them. Generally, you cannot deduct any fines or penalties.

**Interest on loans with respect to life insurance policies.** You generally cannot deduct interest on a debt incurred with respect to any life insurance, annuity, or endowment contract that covers any individual unless that individual is a key person.

If the policy or contract covers a key person, you can deduct the interest on up to $50,000 of debt for that person. However, the deduction for any month cannot be more than the interest figured using Moody's Composite Yield on Seasoned Corporate Bonds (formerly known as Moody's Corporate Bond Yield Average-Monthly Average Corporates) (Moody's rate) for that month.

***Who is a key person?*** A key person is an officer or 20% owner. However, the number of individuals you can treat as key persons is limited to the greater of the following.

- Five individuals.
- The lesser of 5% of the total officers and employees of the company or 20 individuals.

***Exceptions for pre-June 1997 contracts.*** You can generally deduct the interest if the contract was issued before June 9, 1997, and the covered individual is someone other than an employee, officer, or someone financially interested in your business. If the contract was purchased before June 21, 1986, you can generally deduct the interest no matter who is covered by the contract.

***Interest allocated to unborrowed policy cash value.*** Corporations and partnerships generally cannot deduct any interest expense allocable to unborrowed cash values of life insurance, annuity, or endowment contracts. This rule applies to contracts issued after June 8, 1997, that cover someone other than an officer, director, employee, or 20% owner. For more information, see section 264(f) of the Internal Revenue Code.

# Capitalization of Interest

Under the uniform capitalization rules, you generally must capitalize interest on debt equal to your expenditures to produce real property or certain tangible personal property. The property must be produced by you for use in your trade or business or for sale to customers. You cannot

capitalize interest related to property that you acquire in any other manner.

Interest you paid or incurred during the production period must be capitalized if the property produced is designated property. Designated property is any of the following.

- Real property.
- Tangible personal property with a class life of 20 years or more.
- Tangible personal property with an estimated production period of more than 2 years.
- Tangible personal property with an estimated production period of more than 1 year if the estimated cost of production is more than $1 million.

**Property you produce.** You produce property if you construct, build, install, manufacture, develop, improve, create, raise, or grow it. Treat property produced for you under a contract as produced by you up to the amount you pay or incur for the property.

**Carrying charges.** Carrying charges include taxes you pay to carry or develop real estate or to carry, transport, or install personal property. You can choose to capitalize carrying charges not subject to the uniform capitalization rules if they are otherwise deductible. For more information, see chapter 8.

**Capitalized interest.** Treat capitalized interest as a cost of the property produced. You recover your interest when you sell or use the property. If the property is inventory, recover capitalized interest through cost of goods sold. If the property is used in your trade or business, recover capitalized interest through an adjustment to basis, depreciation, amortization, or other method.

**Partnerships and S corporations.** The interest capitalization rules are applied first at the partnership or S corporation level. The rules are then applied at the partners' or shareholders' level to the extent the partnership or S corporation has insufficient debt to support the production or construction costs.

If you are a partner or a shareholder, you may have to capitalize interest you incur during the tax year for the production costs of the partnership or S corporation. You may also have to capitalize interest incurred by the partnership or S corporation for your own production costs. To properly capitalize interest under these rules, you must be given the required information in an attachment to the Schedule K-1 you receive from the partnership or S corporation.

**Additional information.** The procedures for applying the uniform capitalization rules are beyond the scope of this publication. For more information, see sections 1.263A-8 through 1.263A-15 of the regulations and Notice 88-99. Notice 88-99 is in Cumulative Bulletin 1988-2.

# When To Deduct Interest

If the uniform capitalization rules, discussed under *Capitalization of Interest,* earlier, do not apply to you, deduct interest as follows.

**Cash method.** Under the cash method, you can generally deduct only the interest you actually paid during the tax year. You cannot deduct a promissory note you gave as payment because it is a promise to pay and not an actual payment.

***Prepaid interest.*** You generally cannot deduct any interest paid before the year it is due. Interest paid in advance can be deducted only in the tax year in which it is due.

***Discounted loan.*** If interest or a discount is subtracted from your loan proceeds, it is not a payment of interest and you cannot deduct it when you get the loan. For more information, see *Original issue discount (OID)* under *Interest You Can Deduct,* earlier.

***Refunds of interest.*** If you pay interest and then receive a refund in the same tax year of any part of the interest, reduce your interest deduction by the refund. If you receive the refund in a later tax year, include the refund in your income to the extent the deduction for the interest reduced your tax.

**Accrual method.** Under an accrual method, you can deduct only interest that has accrued during the tax year.

***Prepaid interest.*** See *Prepaid interest,* above.

***Discounted loan.*** See *Discounted loan,* above.

***Tax deficiency.*** If you contest a federal income tax deficiency, interest does not accrue until the tax year the final determination of liability is made. If you do not contest the deficiency, then the interest accrues in the year the tax was asserted and agreed to by you.

However, if you contest but pay the proposed tax deficiency and interest, and you do not designate the payment as a cash bond, then the interest is deductible in the year paid.

***Related person.*** If you use an accrual method, you cannot deduct interest owed to a related person who uses the cash method until payment is made and the interest is includible in the gross income of that person. The relationship is determined as of the end of the tax year for which the interest would otherwise be deductible. If a deduction is denied under this rule, the rule will continue to apply even if your relationship with the person ceases to exist before the interest is includible in the gross income of that person. See *Related Persons* in Publication 538.

# Below-Market Loans

If you receive a below-market gift or demand loan and use the proceeds in your trade or business, you may be able to deduct the forgone interest. See *Treatment of gift and demand loans* later in this discussion.

A below-market loan is a loan on which no interest is charged or on which interest is charged at a rate below the applicable federal rate. A gift or demand loan that is a below-market loan generally is considered an arm's-length transaction in which you, the borrower, are considered as having received both the following.

- A loan in exchange for a note that requires the payment of interest at the applicable federal rate.
- An additional payment in an amount equal to the forgone interest.

The additional payment is treated as a gift, dividend, contribution to capital, payment of compensation, or other payment, depending on the substance of the transaction.

For any period, forgone interest is:

1. The interest that would be payable for that period if interest accrued on the loan at the applicable federal rate and was payable annually on December 31, minus
2. Any interest actually payable on the loan for the period.


*Applicable federal rates are published by the IRS each month in the Internal Revenue Bulletin. Internal Revenue Bulletins are available on the IRS web site at www.irs.gov. You can also contact an IRS office to get these rates.*

**Loans subject to the rules.** The rules for below-market loans apply to the following.

1. Gift loans (below-market loans where the forgone interest is in the nature of a gift).
2. Compensation-related loans (below-market loans between an employer and an employee or between an independent contractor and a person for whom the contractor provides services).
3. Corporation-shareholder loans.
4. Tax avoidance loans (below-market loans where the avoidance of federal tax is one of the main purposes of the interest arrangement).
5. Loans to qualified continuing care facilities under a continuing care contract (made after October 11, 1985).

Except as noted in (5) above, these rules apply to demand loans (loans payable in full at any time upon the lender's demand) outstanding after June 6, 1984, and to term loans (loans that are not demand loans) made after that date.

**Treatment of gift and demand loans.** If you receive a below-market gift loan or demand loan, you are treated as receiving an additional payment (as a gift, dividend, etc.) equal to the forgone interest on the loan. You are then treated as transferring this amount back to the lender as interest. These transfers are considered to occur annually, generally on December 31. If you use the loan proceeds in your trade or business, you can deduct the forgone interest each year as a business interest expense. The lender must report it as interest income.

***Limit on forgone interest for gift loans of $100,000 or less.*** For gift loans between individuals, forgone interest treated as transferred

back to the lender is limited to the borrower's net investment income for the year. This limit applies if the outstanding loans between the lender and borrower total $100,000 or less. If the borrower's net investment income is $1,000 or less, it is treated as zero. This limit does not apply to a loan if the avoidance of any federal tax is one of the main purposes of the interest arrangement.

**Treatment of term loans.** If you receive a below-market term loan other than a gift or demand loan, you are treated as receiving an additional cash payment (as a dividend, etc.) on the date the loan is made. This payment is equal to the loan amount minus the present value, at the applicable federal rate, of all payments due under the loan. The same amount is treated as original issue discount on the loan. See *Original issue discount (OID)* under *Interest You Can Deduct*, earlier.

**Exceptions for loans of $10,000 or less.** The rules for below-market loans do not apply to any day on which the total outstanding loans between the borrower and lender is $10,000 or less. This exception applies only to the following.

1. Gift loans between individuals if the loan is not directly used to buy or carry income-producing assets.
2. Compensation-related loans or corporation-shareholder loans if the avoidance of any federal tax is not a principal purpose of the interest arrangement.

This exception does not apply to a term loan described in (2) above that was previously subject to the below-market loan rules. Those rules will continue to apply even if the outstanding balance is reduced to $10,000 or less.

**Exceptions for loans without significant tax effect.** The following loans are specifically exempted from the rules for below-market loans because their interest arrangements do not have a significant effect on the federal tax liability of the borrower or the lender.

1. Loans made available by lenders to the general public on the same terms and conditions that are consistent with the lender's customary business practices.
2. Loans subsidized by a federal, state, or municipal government that are made available under a program of general application to the public.
3. Certain employee-relocation loans.
4. Certain loans to or from a foreign person, unless the interest income would be effectively connected with the conduct of a U.S. trade or business and not exempt from U.S. tax under an income tax treaty.
5. Any other loan if the taxpayer can show that the interest arrangement has no significant effect on the federal tax liability of the lender or the borrower. Whether an interest arrangement has a significant effect on the federal tax liability of the lender or the borrower will be determined by all the facts and circumstances. Consider all the following factors.
   a. Whether items of income and deduction generated by the loan offset each other.
   b. The amount of the items.
   c. The cost of complying with the below-market loan provisions if they were to apply.
   d. Any reasons, other than taxes, for structuring the transaction as a below-market loan.

**Exception for certain loans to a qualified continuing care facility.** The below-market interest rules do not apply to a loan made by a lender to a qualified continuing care facility under a continuing care contract if the lender (or lender's spouse) is age 65 or older by the end of the calendar year. For 2005, this exception applies only to the part of the total outstanding loans from the lender (or lender's spouse) that does not exceed $158,100.

A qualified continuing care facility is one or more facilities that are designed to provide services under continuing care contracts and where substantially all the residents have entered into continuing care contracts. In addition, substantially all the facilities used to provide services required under the continuing care contract must be owned or operated by the loan borrower.

A continuing care contract is a written contract between an individual and a qualified continuing care facility that meets all the following conditions.

1. The individual and/or the individual's spouse must be entitled to use the facility for the rest of their life or lives.
2. The residential use must begin in a separate, independent living unit provided by the continuing care facility and continue until the individual (or individual's spouse) is incapable of living independently. The facility must provide various "personal care" services to the resident such as maintenance of the residential unit, meals, and daily aid and supervision relating to routine medical needs.
3. The facility must be obligated to provide long-term nursing care if the resident is no longer capable of living independently.
4. The contract must require the facility to provide the "personal services" and "long-term nursing care" without substantial additional cost to the individual.

**Sale or exchange of property.** Different rules generally apply to a loan connected with the sale or exchange of property. If the loan does not provide adequate stated interest, part of the principal payment may be considered interest. However, there are exceptions that may require you to apply the below-market interest rate rules to these loans. See *Unstated Interest and Original Issue Discount (OID)* in Publication 537.

**More information.** For more information on below-market loans, see section 7872 of the Internal Revenue Code and section 1.7872-5T of the regulations.

# 6.

# Taxes

## Introduction

You can deduct various federal, state, local, and foreign taxes directly attributable to your trade or business as business expenses.


*You cannot deduct federal income taxes, estate and gift taxes, or state inheritance, legacy, and succession taxes.*

### Topics

This chapter discusses:

- When to deduct taxes
- Real estate taxes
- Income taxes
- Employment taxes
- Other taxes

### Useful Items

You may want to see:

**Publication**

- ❑ **15** (Circular E), Employer's Tax Guide
- ❑ **334** Tax Guide for Small Business
- ❑ **510** Excise Taxes for 2006
- ❑ **538** Accounting Periods and Methods
- ❑ **551** Basis of Assets

**Form (and Instructions)**

- ❑ **Sch A (Form 1040)** Itemized Deductions
- ❑ **Sch SE (Form 1040)** Self-Employment Tax
- ❑ **3115** Application for Change in Accounting Method

See chapter 14 for information about getting publications and forms.

## When To Deduct Taxes

Generally, you can only deduct taxes in the year you pay them. This applies whether you use the cash method or an accrual method of accounting.

Under an accrual method, you can deduct a tax before you pay it if you meet the exception for recurring items discussed under *Economic Performance* in Publication 538. You can also elect to ratably accrue real estate taxes as discussed later under *Real Estate Taxes.*

**Limit on accrual of taxes.** A taxing jurisdiction can require the use of a date for accruing taxes that is earlier than the date it originally

required. However, if you use an accrual method, and can deduct the tax before you pay it, use the original accrual date for the year of change and all future years to determine when you can deduct the tax.

***Example.*** Your state imposes a tax on personal property used in a trade or business conducted in the state. This tax is assessed and becomes a lien as of July 1 (accrual date). In 2005, the state changed the assessment and lien dates from July 1, 2006, to December 31, 2005, for property tax year 2006. Use the original accrual date (July 1, 2006) to determine when you can deduct the tax. You must also use the July 1 accrual date for all future years to determine when you can deduct the tax.

**Uniform capitalization rules.** Uniform capitalization rules apply to certain taxpayers who produce real property or tangible personal property for use in a trade or business or for sale to customers. They also apply to certain taxpayers who acquire property for resale. Under these rules, you either include certain costs in inventory or capitalize certain expenses related to the property, such as taxes. For more information, see chapter 1.

**Carrying charges.** Carrying charges include taxes you pay to carry or develop real estate or to carry, transport, or install personal property. You can elect to capitalize carrying charges not subject to the uniform capitalization rules if they are otherwise deductible. For more information, see chapter 8.

**Refunds of taxes.** If you receive a refund for any taxes you deducted in an earlier year, include the refund in income to the extent the deduction reduced your federal income tax in the earlier year. For more information, see *Recovery of amount deducted (tax benefit rule)* in chapter 1.

TIP *You must include in income any interest you receive on tax refunds.*

# Real Estate Taxes

Deductible real estate taxes are any state, local, or foreign taxes on real estate levied for the general public welfare. The taxing authority must base the taxes on the assessed value of the real estate and charge them uniformly against all property under its jurisdiction. Deductible real estate taxes generally do not include taxes charged for local benefits and improvements that increase the value of the property. See *Taxes for local benefits,* later.

If you use an accrual method, you generally cannot accrue real estate taxes until you pay them to the government authority. However, you can elect to ratably accrue the taxes during the year. See *Electing to ratably accrue,* later.

**Taxes for local benefits.** Generally, you cannot deduct taxes charged for local benefits and improvements that tend to increase the value of your property. These include assessments for streets, sidewalks, water mains, sewer lines, and public parking facilities. You should increase the basis of your property by the amount of the assessment.

You can deduct taxes for these local benefits only if the taxes are for maintenance, repairs, or interest charges related to those benefits. If part of the tax is for maintenance, repairs, or interest, you must be able to show how much of the tax is for these expenses to claim a deduction for that part of the tax.

***Example.*** Waterfront City, to improve downtown commercial business, converted a downtown business area street into an enclosed pedestrian mall. The city assessed the full cost of construction, financed with 10-year bonds, against the affected properties. The city is paying the principal and interest with the annual payments made by the property owners.

The assessments for construction costs are not deductible as taxes or as business expenses, but are depreciable capital expenses. The part of the payments used to pay the interest charges on the bonds is deductible as taxes.

**Charges for services.** Water bills, sewerage, and other service charges assessed against your business property are not real estate taxes, but are deductible as business expenses.

**Purchase or sale of real estate.** If real estate is sold, the real estate taxes must be allocated between the buyer and the seller.

The buyer and seller must allocate the real estate taxes according to the number of days in the real property tax year (the period to which the tax imposed relates) that each owned the property. Treat the seller as paying the taxes up to but not including the date of sale. Treat the buyer as paying the taxes beginning with the date of sale. You can usually find this information on the settlement statement you received at closing.

If you (the seller) cannot deduct taxes until they are paid because you use the cash method and the buyer of your property is personally liable for the tax, you are considered to have paid your part of the tax at the time of the sale. This permits you to deduct the part of the tax up to (but not including) the date of sale even though you did not pay it. You must also include the amount of that tax in the selling price of the property.

If you (the seller) use an accrual method and have not elected to ratably accrue real estate taxes, you are considered to have accrued your part of the tax on the date you sell the property.

***Example.*** Al Green, a calendar year accrual method taxpayer, owns real estate in Elm County. He has not elected to ratably accrue property taxes. November 30 of each year is the assessment and lien date for the current real property tax year, which is the calendar year. He sold the property on June 30, 2005. Under his accounting method he would not be able to claim a deduction for the taxes because the sale occurred before November 30. He is treated as having accrued his part of the tax, $^{180}/_{365}$ (January 1–June 29), on June 30 and he can deduct it for 2005.

**Electing to ratably accrue.** If you use an accrual method, you can elect to accrue real estate tax related to a definite period ratably over that period.

***Example.*** John Smith is a calendar year taxpayer who uses an accrual method. His real estate taxes for the real property tax year, July 1, 2005, to June 30, 2006, are $1,200. July 1 is the assessment and lien date.

If John elects to ratably accrue the taxes, $600 will accrue in 2005 ($1,200 × $^{6}/_{12}$, July 1–December 31) and the balance will accrue in 2006.

***Separate elections.*** You can elect to ratably accrue the taxes for each separate trade or business and for nonbusiness activities if you account for them separately. Once you elect to ratably accrue real estate taxes, you must use that method unless you get permission from the IRS to change. See *Form 3115*, later.

***Making the election.*** If you elect to ratably accrue the taxes for the first year in which you incur real estate taxes, attach a statement to your income tax return for that year. The statement should show all the following items.

- The trades or businesses to which the election applies and the accounting method or methods used.
- The period to which the taxes relate.
- The computation of the real estate tax deduction for that first year.

Generally, you must file your return by the due date (including extensions). However, if you timely filed your return for the year without electing to ratably accrue, you can still make the election by filing an amended return within 6 months after the due date of the return (excluding extensions). Attach the statement to the amended return and write "Filed pursuant to section 301.9100-2" on the statement. File the amended return at the same address you filed the original return.

***Form 3115.*** If you elect to ratably accrue for a year after the first year in which you incur real estate taxes or if you want to revoke your election to ratably accrue real estate taxes, file Form 3115. For more information, including applicable time frames for filing, see the instructions for Form 3115.

# Income Taxes

This section discusses federal, state, local, and foreign income taxes.

**Federal income taxes.** You cannot deduct federal income taxes.

**State and local income taxes.** A corporation or partnership can deduct state and local income taxes imposed on the corporation or partnership as business expenses. An individual can deduct state and local income taxes only as an itemized deduction on Schedule A (Form 1040).

However, an individual can deduct a state tax on gross income (as distinguished from net income) directly attributable to a trade or business as a business expense.

***Accrual of contested income taxes.*** If you use an accrual method, can deduct taxes before you pay them, and contest a state or local income tax liability, a special rule applies. Under this special rule, you must accrue and deduct any contested amount in the tax year in which the liability is finally determined.

If additional state or local income taxes for a prior year are assessed in a later year, you can deduct the taxes in the year in which they were originally imposed (the prior year) if the tax liability is not contested. You cannot deduct them in the year in which the liability is finally determined.

TIP *The filing of an income tax return is not considered a contest and, in the absence of an overt act of protest, you can deduct the tax in the prior year. Also, you can deduct any additional taxes in the prior year if you do not show some affirmative evidence of denial of the liability.*

However, if you consistently deduct additional assessments in the year they are paid or finally determined (including those for which there was no contest), you must continue to do so. You cannot take a deduction in the earlier year unless you receive permission to change your method of accounting. For more information on accounting methods, see *When Can I Deduct an Expense?* in chapter 1.

**Foreign income taxes.** Generally, you can take either a deduction or a credit for income taxes imposed on you by a foreign country or a U.S. possession. However, an individual cannot take a deduction or credit for foreign income taxes paid on income that is exempt from U.S. tax under the foreign earned income exclusion or the foreign housing exclusion. For information on these exclusions, see Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad. For information on the foreign tax credit, see Publication 514, Foreign Tax Credit for Individuals.

## Employment Taxes

If you have employees, you must withhold various taxes from your employees' pay. Most employers must withhold their employees' share of social security and Medicare taxes along with state and federal income taxes. You may also need to pay certain employment taxes from your own funds. These include your share of social security and Medicare taxes as an employer, along with unemployment taxes.

You should treat the taxes you withhold from your employees' pay as wages on your tax return. You can deduct the employment taxes you must pay from your own funds as taxes.

***Example.*** You pay your employee $18,000 a year. However, after you withhold various taxes, your employee receives $14,500. You also pay an additional $1,500 in employment taxes. You should deduct the full $18,000 as wages. You can deduct the $1,500 you pay from your own funds as taxes.

For more information on employment taxes, see Publication 15 (Circular E).

**Unemployment fund taxes.** As an employer, you may have to make payments to a state unemployment compensation fund or to a state disability benefit fund. Deduct these payments as taxes.

## Other Taxes

The following are other taxes you can deduct if you incur them in the ordinary course of your trade or business.

**Excise taxes.** You can deduct as a business expense all excise taxes that are ordinary and necessary expenses of carrying on your trade or business. However, see *Fuel taxes,* later.

**Franchise taxes.** You can deduct corporate franchise taxes as a business expense.

**Fuel taxes.** Taxes on gasoline, diesel fuel, and other motor fuels that you use in your business are usually included as part of the cost of the fuel. Do not deduct these taxes as a separate item.

You may be entitled to a credit or refund for federal excise tax you paid on fuels used for certain purposes. For more information, see Publication 510.

**Occupational taxes.** You can deduct as a business expense an occupational tax charged at a flat rate by a locality for the privilege of working or conducting a business in the locality.

**Personal property tax.** You can deduct any tax imposed by a state or local government on personal property used in your trade or business.

**Sales tax.** Treat any sales tax you pay on a service or on the purchase or use of property as part of the cost of the service or property. If the service or the cost or use of the property is a deductible business expense, you can deduct the tax as part of that service or cost. If the property is merchandise bought for resale, the sales tax is part of the cost of the merchandise. If the property is depreciable, add the sales tax to the basis for depreciation. For more information on basis, see Publication 551.

CAUTION *Do not deduct state and local sales taxes imposed on the buyer that you must collect and pay over to the state or local government. Also, do not include these taxes in gross receipts or sales.*

**Self-employment tax.** You can deduct one-half of your self-employment tax as a business expense in figuring your adjusted gross income. This deduction only affects your income tax. It does not affect your net earnings from self-employment or your self-employment tax.

To deduct the tax, enter on Form 1040, line 27, the amount shown on the Deduction for one-half of self-employment tax line of Schedule SE (Form 1040).

For more information on self-employment tax, see Publication 334.

# 7.

# Insurance

## Introduction

You generally can deduct the ordinary and necessary cost of insurance as a business expense if it is for your trade, business, or profession. However, you may have to capitalize certain insurance costs under the uniform capitalization rules. For more information, see *Capitalized Premiums,* later.

### Topics

This chapter discusses:

- Deductible premiums
- Nondeductible premiums
- Capitalized premiums
- When to deduct premiums

### Useful Items

You may want to see:

**Publication**

- ❑ **15-B** Employer's Tax Guide to Fringe Benefits
- ❑ **525** Taxable and Nontaxable Income
- ❑ **538** Accounting Periods and Methods
- ❑ **547** Casualties, Disasters, and Thefts

**Form (and Instructions)**

- ❑ **1040** U.S. Individual Income Tax Return

See chapter 14 for information about getting publications and forms.

## Deductible Premiums

You generally can deduct premiums you pay for the following kinds of insurance related to your trade or business.

1. Insurance that covers fire, storm, theft, accident, or similar losses.
2. Credit insurance that covers losses from business bad debts.
3. Group hospitalization and medical insurance for employees, including long-term care insurance.
   a. If a partnership pays accident and health insurance premiums for its partners, it generally can deduct them as guaranteed payments to partners.
   b. If an S corporation pays accident and health insurance premiums for its 2% shareholder-employees, it generally can deduct them, but must also include them in the shareholder's wages sub-

ject to federal income tax withholding. See Publication 15-B.

4. Liability insurance.
5. Malpractice insurance that covers your personal liability for professional negligence resulting in injury or damage to patients or clients.
6. Workers' compensation insurance set by state law that covers any claims for bodily injuries or job-related diseases suffered by employees in your business, regardless of fault.
   a. If a partnership pays workers' compensation premiums for its partners, it generally can deduct them as guaranteed payments to partners.
   b. If an S corporation pays workers' compensation premiums for its 2% shareholder-employees, it generally can deduct them, but must also include them in the shareholder's wages.
7. Contributions to a state unemployment insurance fund are deductible as taxes if they are considered taxes under state law.
8. Overhead insurance that pays for business overhead expenses you have during long periods of disability caused by your injury or sickness.
9. Car and other vehicle insurance that covers vehicles used in your business for liability, damages, and other losses. If you operate a vehicle partly for personal use, deduct only the part of the insurance premium that applies to the business use of the vehicle. If you use the standard mileage rate to figure your car expenses, you cannot deduct any car insurance premiums.
10. Life insurance covering your officers and employees if you are not directly or indirectly a beneficiary under the contract.
11. Business interruption insurance that pays for lost profits if your business is shut down due to a fire or other cause.

## Self-Employed Health Insurance Deduction

You may be able to deduct 100% of the amount paid for medical and dental insurance and qualified long-term care insurance for you, your spouse, and your dependents if you are one of the following.

- A self-employed individual with a net profit reported on Schedule C, C-EZ, or F.
- A partner with net earnings from self-employment reported on Schedule K-1 (Form 1065), box 14, code A.
- A shareholder owning more than 2% of the outstanding stock of an S corporation with wages from the corporation reported on Form W-2.

The insurance plan must be established under your business. You may be allowed this deduction whether you paid the premiums yourself or your partnership or S corporation paid them and you included the premium amounts in your gross income. Take the deduction on line 29 of Form 1040.

**Qualified long-term care insurance.** You can include premiums paid on a qualified long-term care insurance contract for you, your spouse, or your dependents when figuring your deduction. But, for each person covered, you can include only the smaller of the following amounts.

1. The amount paid for that person.
2. The amount shown below. (Use the person's age at the end of the year.)
   a. Age 40 or younger–$270
   b. Age 41 to 50–$510
   c. Age 51 to 60–$1,020
   d. Age 61 to 70–$2,720
   e. Age 71 or older–$3,400

***Qualified long-term care insurance contract.*** A qualified long-term care insurance contract is an insurance contract that only provides coverage of qualified long-term care services. The contract must meet all the following requirements.

- It must be guaranteed renewable.
- It must provide that refunds, other than refunds on the death of the insured or complete surrender or cancellation of the contract, and dividends under the contract may be used only to reduce future premiums or increase future benefits.
- It must not provide for a cash surrender value or other money that can be paid, assigned, pledged, or borrowed.
- It generally must not pay or reimburse expenses incurred for services or items that would be reimbursed under Medicare, except where Medicare is a secondary payer or the contract makes per diem or other periodic payments without regard to expenses.

***Qualified long-term care services.*** Qualified long-term care services are:

- Necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and
- Maintenance or personal care services.

The services must be required by a chronically ill individual and prescribed by a licensed health care practitioner.

***Chronically ill individual.*** A chronically ill individual is a person who has been certified as one of the following.

- An individual who has been unable, due to loss of functional capacity for at least 90 days, to perform at least two activities of daily living without substantial assistance from another individual. Activities of daily living are eating, toileting, transferring (general mobility), bathing, dressing, and continence.
- An individual who requires substantial supervision to be protected from threats to health and safety due to severe cognitive impairment.

The certification must have been made by a licensed health care practitioner within the previous 12 months.

***Benefits received.*** For information on excluding benefits you receive from a long-term care contract from gross income, see Publication 525.

**Other coverage.** You cannot take the deduction for any month you were eligible to participate in any employer (including your spouse's) subsidized health plan at any time during that month. This rule is applied separately to plans that provide long-term care insurance and plans that do not provide long-term care insurance. However, any medical insurance payments not deductible on line 29 of Form 1040 can be included as medical expenses on Schedule A (Form 1040) if you itemize deductions.

**Effect on itemized deductions.** Subtract the health insurance deduction from your medical insurance when figuring medical expenses on Schedule A (Form 1040) if you itemize deductions.

**Effect on self-employment tax.** Do not subtract the health insurance deduction when figuring net earnings for your self-employment tax.

**How to figure the deduction.** Generally, you can use the worksheet in the Form 1040 instructions to figure your deduction. However, if any of the following apply, you must use the worksheet in this chapter.

- You had more than one source of income subject to self-employment tax.
- You file Form 2555 or Form 2555-EZ (relating to foreign earned income).
- You are using amounts paid for qualified long-term care insurance to figure the deduction.

If you are claiming the health coverage tax credit, complete Form 8885 before you figure this deduction.

***Health coverage tax credit.*** You may be able to take this credit only if you were an eligible trade adjustment assistance (TAA) recipient, alternative TAA recipient, or Pension Benefit Guaranty Corporation pension recipient. Use Form 8885, Health Coverage Tax Credit, to figure the amount, if any, of your health insurance credit.

***More than one health plan and business.*** If you have more than one health plan during the year and each plan is established under a different business, you must use separate worksheets (Worksheet 7-A) to figure each plan's net earnings limit. Include the premium you paid under each plan on line 1 or line 2 of that separate worksheet and your net profit (or wages) from that business on line 4 (or line 11). For a plan that provides long-term care insurance, the total of the amounts entered for each person on line 2 of all worksheets cannot be more than the appropriate limit shown on line 2 for that person.

Worksheet 7-A. **Self-Employed Health Insurance Deduction Worksheet** *(Keep for your records.)*

| | | |
|---|---|---|
| **1.** | Enter total payments made during the year for health insurance coverage established under your business for you, your spouse, and your dependents. (***Do not include*** payments for any month you were eligible to participate in a health plan subsidized by your or your spouse's employer or any amount you claim on line 4 of Form 8885. Also, do not include payments for qualified long-term care insurance.) | **1.** |
| **2.** | For coverage under a qualified long-term care insurance contract, enter for each person covered the ***smaller*** of the following amounts.<br>a) Total payments made for that person during the year.<br>b) The amount shown below. (Use the person's age at the end of the year.)<br>$270—if that person is age 40 or younger<br>$510—if age 41 to 50<br>$1,020—if age 51 to 60<br>$2,720—if age 61 to 70<br>$3,400—if age 71 or older<br>(***Do not include*** payments for any month you were eligible to participate in a long-term care insurance plan subsidized by your or your spouse's employer.) If more than one person is covered, figure separately the amount to enter for each person. Then enter the total of those amounts | **2.** |
| **3.** | Add the total of lines 1 and 2 | **3.** |
| **4.** | Enter your net profit* and any other earned income** from the trade or business under which the insurance plan is established. (If the business is an S corporation, skip to line 11.) | **4.** |
| **5.** | Enter the total of all net profits* from: line 31, Schedule C (Form 1040); line 3, Schedule C-EZ (Form 1040); line 36, Schedule F (Form 1040); or box 14, code A, Schedule K-1 (Form 1065); plus any other income allocable to the profitable businesses. See the instructions for Schedule SE (Form 1040). (***Do not include*** any net losses shown on these schedules.) | **5.** |
| **6.** | Divide line 4 by line 5 | **6.** |
| **7.** | Multiply Form 1040, line 27 by the percentage on line 6 | **7.** |
| **8.** | Subtract line 7 from line 4 | **8.** |
| **9.** | Enter the amount, if any, from Form 1040, line 28, attributable to the same trade or business in which the insurance plan is established | **9.** |
| **10.** | Subtract line 9 from line 8 | **10.** |
| **11.** | Enter your wages from an S corporation in which you are a more-than-2% shareholder and in which the insurance plan is established | **11.** |
| **12.** | Enter the amount from Form 2555, line 43, attributable to the amount entered on line 4 or 11 above, or the amount from Form 2555-EZ, line 18, attributable to the amount entered on line 11 above | **12.** |
| **13.** | Subtract line 12 from line 10 or 11, whichever applies | **13.** |
| **14.** | Compare the amounts on lines 3 and 13 above. Enter the ***smaller*** of the two amounts here and on Form 1040, line 29. (***Do not include*** this amount when figuring a medical expense deduction on Schedule A (Form 1040).) | **14.** |

* If you used either optional method to figure your net earnings from self-employment from any business, do not enter your net profit from the business. Instead, enter the amount attributable to that business from Schedule SE, line 4b.

** ***Earned income*** includes net earnings and gains from the sale, transfer, or licensing of property you created. It does not include capital gain income.

# Nondeductible Premiums

You cannot deduct premiums on the following kinds of insurance.

1. Self-insurance reserve funds. You cannot deduct amounts credited to a reserve set up for self-insurance. This applies even if you cannot get business insurance coverage for certain business risks. However, your actual losses may be deductible. See Publication 547.
2. Loss of earnings. You cannot deduct premiums for a policy that pays for lost earnings due to sickness or disability. However, see the discussion on overhead insurance, item (8), under *Deductible Premiums,* earlier.
3. Certain life insurance and annuities.
   a. For contracts issued before June 9, 1997, you cannot deduct the premiums on a life insurance policy covering you, an employee, or any person with a financial interest in your business if you are directly or indirectly a beneficiary of the policy. You are included among possible beneficiaries of the policy if the policy owner is obligated to repay a loan from you using the proceeds of the policy. A person has a financial interest in your business if the person is an owner or part owner of the business or has lent money to the business.
   b. For contracts issued after June 8, 1997, you generally cannot deduct the premiums on any life insurance policy, endowment contract, or annuity contract if you are directly or indirectly a beneficiary. The disallowance applies without regard to whom the policy covers.
   c. Partners. If, as a partner in a partnership, you take out an insurance policy on your own life and name your partners as beneficiaries to induce them to retain their investments in the partnership, you are considered a beneficiary. You cannot deduct the insurance premiums.
4. Insurance to secure a loan. If you take out a policy on your life or on the life of another person with a financial interest in your business to get or protect a business loan, you cannot deduct the premiums as a business expense. Nor can you deduct the premiums as interest on business loans or as an expense of financing loans. In the event of death, the proceeds of the policy are not taxed as income even if they are used to liquidate the debt.

# Capitalized Premiums

Under the uniform capitalization rules, you must capitalize the direct costs and part of the indirect costs for certain production or resale activities. Include these costs in the basis of property you produce or acquire for resale, rather than claiming them as a current deduction. You recover the costs through depreciation, amortization, or cost of goods sold when you use, sell, or otherwise dispose of the property.

Indirect costs include premiums for insurance on your plant or facility, machinery, equipment, materials, property produced, or property acquired for resale.

**Uniform capitalization rules.** You may be subject to the uniform capitalization rules if you do any of the following, unless the property is produced for your use other than in a business or an activity carried on for profit.

1. Produce real property or tangible personal property. For this purpose, tangible personal property includes a film, sound recording, video tape, book, or similar property.
2. Acquire property for resale.

However, these rules do not apply to the following property.

1. Personal property you acquire for resale if your average annual gross receipts are $10 million or less for the 3 prior tax years.
2. Property you produce if you meet either of the following conditions.
   a. Your indirect costs of producing the property are $200,000 or less.

b. You use the cash method of accounting and do not account for inventories.

**More information.** For more information on these rules, see *Uniform Capitalization Rules* in Publication 538 and the regulations under Internal Revenue Code section 263A.

## When To Deduct Premiums

You can usually deduct insurance premiums in the tax year to which they apply.

**Cash method.** If you use the cash method of accounting, you generally deduct insurance premiums in the tax year you actually paid them, even if you incurred them in an earlier year. However, see *Prepayment,* later.

**Accrual method.** If you use an accrual method of accounting, you cannot deduct insurance premiums before the tax year in which you incur a liability for them. In addition, you cannot deduct insurance premiums before the tax year in which you actually pay them (unless the exception for recurring items applies). For more information about the accrual method of accounting, see chapter 1. For information about the exception for recurring items, see Publication 538.

**Prepayment.** You cannot deduct expenses in advance, even if you pay them in advance. This rule applies to any expense paid far enough in advance to, in effect, create an asset with a useful life extending substantially beyond the end of the current tax year.

Expenses such as insurance are generally allocable to a period of time. You can deduct insurance expenses for the year to which they are allocable.

***Example.*** In 2005, you signed a 3-year insurance contract. Even though you paid the premiums for 2005, 2006, and 2007 when you signed the contract, you can only deduct the premium for 2005 on your 2005 tax return. You can deduct in 2006 and 2007 the premium allocable to those years.

**Dividends received.** If you receive dividends from business insurance and you deducted the premiums in prior years, at least part of the dividends generally are income. For more information, see *Recovery of amount deducted (tax benefit rule)* in chapter 1 under *How Much Can I Deduct?*

# 8. Costs You Can Deduct or Capitalize

## Introduction

This chapter discusses costs you can elect to deduct or capitalize.

You generally deduct a cost as a current business expense by subtracting it from your income in either the year you incur it or the year you pay it.

If you capitalize a cost, you may be able to recover it over a period of years through periodic deductions for amortization, depletion, or depreciation. When you capitalize a cost, you add it to the basis of property to which it relates.

A partnership, corporation, estate, or trust makes the election to deduct or capitalize the costs discussed in this chapter except for exploration costs for mineral deposits. Each individual partner, shareholder, or beneficiary elects whether to deduct or capitalize exploration costs.


*You may be subject to the alternative minimum tax (AMT) if you deduct any of the expenses discussed in this chapter, other than carrying charges and the costs of removing architectural barriers and retired assets.*

*For more information on the alternative minimum tax, see the instructions for one of the following forms.*

- *Form 6251, Alternative Minimum Tax—Individuals.*
- *Form 4626, Alternative Minimum Tax—Corporations.*

### Topics

This chapter discusses:

- Carrying charges
- Research and experimental costs
- Intangible drilling costs
- Exploration costs
- Development costs
- Circulation costs
- Environmental cleanup costs
- Business start-up and organizational costs
- Reforestation costs
- Retired asset removal costs
- Barrier removal costs

### Useful Items

You may want to see:

**Publication**

- ❑ **544** Sales and Other Dispositions of Assets

**Form (and Instructions)**

- ❑ **3468** Investment Credit
- ❑ **8826** Disabled Access Credit

See chapter 14 for information about getting publications and forms.

## Carrying Charges

Carrying charges include the taxes and interest you pay to carry or develop real property or to carry, transport, or install personal property. Certain carrying charges must be capitalized under the uniform capitalization rules. (For information on capitalization of interest, see chapter 5.) You can elect to capitalize carrying charges not subject to the uniform capitalization rules, but only if they are otherwise deductible.

You can elect to capitalize carrying charges separately for each project you have and for each type of carrying charge. For unimproved and unproductive real property, your election is good for only 1 year. You must decide whether to capitalize carrying charges each year the property remains unimproved and unproductive. For other real property, your election to capitalize carrying charges remains in effect until construction or development is completed. For personal property, your election is effective until the date you install or first use it, whichever is later.

**How to make the election.** To make the election to capitalize a carrying charge, write a statement saying which charges you elect to capitalize. Attach it to your original tax return for the year the election is to be effective. However, if you timely filed your return for the year without making the election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Attach the statement to the amended return and write "Filed pursuant to section 301.9100-2" on the statement. File the amended return at the same address you filed the original return.

## Research and Experimental Costs

The costs of research and experimentation are generally capital expenses. However, you can elect to deduct these costs as a current business expense. Your election to deduct these costs is binding for the year it is made and for all later years unless you get IRS approval to make a change.

If you meet certain requirements, you may elect to defer and amortize research and experimental costs. For information on electing to defer and amortize these costs, see *Research and Experimental Costs* in chapter 9.

**Research and experimental costs defined.** Research and experimental costs are reasonable costs you incur in your trade or business for activities intended to provide information that would eliminate uncertainty about the development or improvement of a product. Uncertainty exists if the information available to you does not establish how to develop or improve a product or the appropriate design of a product. Whether costs qualify as research and experimental costs depends on the nature of the activity to which the costs relate rather than on the nature of the product or improvement being developed or the level of technological advancement.

The costs of obtaining a patent, including attorneys' fees paid or incurred in making and perfecting a patent application, are research and experimental costs. However, costs paid or incurred to obtain another's patent are not research and experimental costs.

***Product.*** The term "product" includes any of the following items.

- Formula.
- Invention.
- Patent.
- Pilot model.
- Process.
- Technique.
- Property similar to the items listed above.

It also includes products used by you in your trade or business or held for sale, lease, or license.

***Costs not included.*** Research and experimental costs do not include expenses for any of the following activities.

- Advertising or promotions.
- Consumer surveys.
- Efficiency surveys.
- Management studies.
- Quality control testing.
- Research in connection with literary, historical, or similar projects.
- The acquisition of another's patent, model, production, or process.

**When and how to elect.** You make the election to deduct research and experimental costs by deducting them on your tax return for the year in which you first pay or incur research and experimental costs. If you do not make the election to deduct research and experimental costs in the first year in which you pay or incur the costs, you can deduct the costs in a later year only with approval from the IRS.

**Research credit.** If you pay or incur qualified research expenses, you may be able to take the research credit. For more information about the research credit, see the instructions to Form 6765, Credit for Increasing Research Activities.

| IF you . . . | THEN . . . |
|---|---|
| Elect to deduct research and experimental costs as a current business expense | Deduct all research and experimental costs in the first year you pay or incur the costs and all later years. |
| Do not deduct research and experimental costs as a current business expense | If you meet the requirements, amortize them over at least 60 months, starting with the month you first receive an economic benefit from the research. See *Research and Experimental Costs* in chapter 9. |

## Intangible Drilling Costs

The costs of developing oil, gas, or geothermal wells are ordinarily capital expenditures. You can usually recover them through depreciation or depletion. However, you can elect to deduct intangible drilling costs (IDCs) as a current business expense. These are certain drilling and development costs for wells in the United States in which you hold an operating or working interest. You can deduct only costs for drilling or preparing a well for the production of oil, gas, or geothermal steam or hot water.

You can elect to deduct only the costs of items with no salvage value. These include wages, fuel, repairs, hauling, and supplies related to drilling wells and preparing them for production. Your cost for any drilling or development work done by contractors under any form of contract is also an IDC. However, see *Amounts paid to contractor that must be capitalized,* later.

You can also elect to deduct the cost of drilling exploratory bore holes to determine the location and delineation of offshore hydrocarbon deposits if the shaft is capable of conducting hydrocarbons to the surface on completion. It does not matter whether there is any intent to produce hydrocarbons.

If you do not elect to deduct your IDCs as a current business expense, you can elect to deduct them over the 60-month period beginning with the month they were paid or incurred.

**Amounts paid to contractor that must be capitalized.** Amounts paid to a contractor must be capitalized if they are either:

- Amounts properly allocable to the cost of depreciable property, or
- Amounts paid only out of production or proceeds from production if these amounts are depletable income to the recipient.

**How to make the election.** You elect to deduct IDCs as a current business expense by taking the deduction on your income tax return for the first tax year you have eligible costs. No formal statement is required. If you file Schedule C (Form 1040), enter these costs under "Other expenses."

For oil and gas wells, your election is binding for the year it is made and for all later years. For geothermal wells, your election can be revoked by the filing of an amended return on which you do not take the deduction. You can file the amended return for the year up to the normal time of expiration for filing a claim for credit or refund, generally, within 3 years after the date you filed the original return or within 2 years after the date you paid the tax, whichever is later.

**Energy credit for costs of geothermal wells.** If you capitalize the drilling and development costs of geothermal wells that you place in service during the tax year, you may be able to claim a business energy credit. See the instructions for Form 3468 for more information.

**Nonproductive well.** If you capitalize your IDCs, you have another option if the well is nonproductive. You can deduct the IDCs of the nonproductive well as an ordinary loss. You must indicate and clearly state your election on your tax return for the year the well is completed. Once made, the election for oil and gas wells is binding for all later years. You can revoke your election for a geothermal well by filing an amended return that does not claim the loss.

**Costs incurred outside the United States.** You cannot deduct as a current business expense all the IDCs paid or incurred for an oil, gas, or geothermal well located outside the United States. However, you can elect to include the costs in the adjusted basis of the well to figure depletion or depreciation. If you do not make this election, you can deduct the costs over the 10-year period beginning with the tax year in which you paid or incurred them. These rules do not apply to a nonproductive well.

## Exploration Costs

The costs of determining the existence, location, extent, or quality of any mineral deposit are ordinarily capital expenditures if the costs lead to the development of a mine. You recover these costs through depletion as the mineral is removed from the ground. However, you can elect to deduct domestic exploration costs paid or incurred before the beginning of the development stage of the mine (except those for oil, gas, and geothermal wells).

**How to make the election.** You elect to deduct exploration costs by taking the deduction on your income tax return, or on an amended income tax return, for the first tax year for which you wish to deduct the costs paid or incurred during the tax year. Your return must adequately describe and identify each property or mine, and clearly state how much is being deducted for each one. The election applies to the tax year you make this election and all later tax years.

***Partnerships.*** Each partner, not the partnership, elects whether to capitalize or to deduct that partner's share of exploration costs.

**Reduced corporate deductions for exploration costs.** A corporation (other than an S corporation) can deduct only 70% of its domestic exploration costs. It must capitalize the remaining 30% of costs and amortize them over

the 60-month period starting with the month the exploration costs are paid or incurred. A corporation may also elect to capitalize and amortize mining exploration costs over a 10-year period. For more information on this method of amortization, see Internal Revenue Code section 59(e).

The 30% the corporation capitalizes cannot be added to its basis in the property to figure cost depletion. However, the amount amortized is treated as additional depreciation and is subject to recapture as ordinary income on a disposition of the property. See *Section 1250 Property* under *Depreciation Recapture* in chapter 3 of Publication 544.

These rules also apply to the deduction of development costs by corporations. See *Development Costs,* later.

**Recapture of exploration expenses.** When your mine reaches the producing stage, you must recapture any exploration costs you elected to deduct. Use either of the following methods.

Method 1—Include the deducted costs in gross income for the tax year the mine reaches the producing stage. Your election must be clearly indicated on the return. Increase your adjusted basis in the mine by the amount included in income. Generally, you must elect this recapture method by the due date (including extensions) of your return. However, if you timely filed your return for the year without making the election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Make the election on your amended return and write "Filed pursuant to section 301.9100-2" on the form where you are including the income. File the amended return at the same address you filed the original return.

Method 2—Do not claim any depletion deduction for the tax year the mine reaches the producing stage and any later tax years until the depletion you would have deducted equals the exploration costs you deducted.

You also must recapture deducted exploration costs if you receive a bonus or royalty from mine property before it reaches the producing stage. Do not claim any depletion deduction for the tax year you receive the bonus or royalty and any later tax years, until the depletion you would have deducted equals the exploration costs you deducted.

Generally, if you dispose of the mine before you have fully recaptured the exploration costs you deducted, recapture the balance by treating all or part of your gain as ordinary income.

Under these circumstances, you generally treat as ordinary income all of your gain if it is less than your adjusted exploration costs with respect to the mine. If your gain is more than your adjusted exploration costs, treat as ordinary income only a part of your gain, up to the amount of your adjusted exploration costs.

**Foreign exploration costs.** If you pay or incur exploration costs for a mine or other natural deposit located outside the United States, you cannot deduct all the costs in the current year. You can elect to include the costs (other than for an oil, gas, or geothermal well) in the adjusted basis of the mineral property to figure cost depletion. (Cost depletion is discussed in chapter 10.) If you do not make this election, you must deduct the costs over the 10-year period beginning with the tax year in which you pay or incur them. These rules also apply to foreign development costs.

# Development Costs

You can deduct costs paid or incurred during the tax year for developing a mine or any other natural deposit (other than an oil or gas well) located in the United States. These costs must be paid or incurred after the discovery of ores or minerals in commercially marketable quantities. Development costs include those incurred for you by a contractor. Also, development costs include depreciation on improvements used in the development of ores or minerals. They do not include costs for the acquisition or improvement of depreciable property.

Instead of deducting development costs in the year paid or incurred, you can elect to treat them as deferred expenses and deduct them ratably as the units of produced ores or minerals benefited by the expenses are sold. This election applies each tax year to expenses paid or incurred in that year. Once made, the election is binding for the year and cannot be revoked for any reason.

**How to make the election.** The election to deduct development costs ratably as the ores or minerals are sold must be made for each mine or other natural deposit by a clear indication on your return or by a statement filed with the IRS office where you file your return. Generally, you must make the election by the due date of the return (including extensions). However, if you timely filed your return for the year without making the election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Clearly indicate the election on your amended return and write "Filed pursuant to section 301.9100-2." File the amended return at the same address you filed the original return.

**Foreign development costs.** The rules discussed earlier for foreign exploration costs apply to foreign development costs.

**Reduced corporate deductions for development costs.** The rules discussed earlier for reduced corporate deductions for exploration costs also apply to corporate deductions for development costs.

# Circulation Costs

A publisher can deduct as a current business expense the costs of establishing, maintaining, or increasing the circulation of a newspaper, magazine, or other periodical. For example, a publisher can deduct the cost of hiring extra employees for a limited time to get new subscriptions through telephone calls. Circulation costs are deductible even if they normally would be capitalized.

This rule does not apply to the following costs that must be capitalized.

- The purchase of land or depreciable property.
- The acquisition of circulation through the purchase of any part of the business of another publisher of a newspaper, magazine, or other periodical, including the purchase of another publisher's list of subscribers.

**Other treatment of circulation costs.** If you do not want to deduct circulation costs as a current business expense, you can elect one of the following ways to recover these costs.

- Capitalize all circulation costs that are properly chargeable to a capital account.
- Amortize circulation costs over the 3-year period beginning with the tax year they were paid or incurred.

**How to make the election.** You elect to capitalize circulation costs by attaching a statement to your return for the first tax year the election applies. Your election is binding for the year it is made and for all later years, unless you get IRS approval to revoke it.

# Environmental Cleanup Costs

Environmental cleanup (remediation) costs are generally capital expenditures. However, you can elect to deduct these costs as a current business expense if certain requirements (discussed later) are met. This special tax treatment is generally available for qualified environmental cleanup costs you pay or incur before January 1, 2006. However, the expensing period is extended to December 31, 2007 for qualified environmental cleanup costs paid or incurred after August 27, 2005, in the Gulf Opportunity (GO) Zone. See Publication 4492, Information for Taxpayers Affected by Hurricanes Katrina, Rita, and Wilma, for more information on the GO Zone.

**Qualified environmental cleanup costs.** Qualified environmental cleanup costs are generally costs you pay or incur to abate or control hazardous substances at a qualified contaminated site.

***Hazardous substance.*** Hazardous substances are defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and certain substances are designated as hazardous in section 102 of the Act. Substances are not hazardous if a removal or remedial action is prohibited under sections 104 and 104(a)(3) of the Act. After August 27, 2005, petroleum products, within the GO Zone, are treated as hazardous substances.

***Qualified contaminated site.*** A qualified contaminated site is any area that meets both of the following requirements.

1. You hold it for use in a trade or business, for the production of income, or as inventory.

2. There has been a release, threat of release, or disposal of any hazardous substance at or on the site.

You must get a statement from the designated state environmental agency that the site meets requirement (2).

A site is not eligible if it is on, or proposed for, the national priorities list under section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. To find out if a site is on the national priorities list, contact the U.S. Environmental Protection Agency.

***Expenditures for depreciable property.*** You cannot deduct the cost of acquiring depreciable property used in connection with the abatement or control of hazardous substances at a qualified contaminated site. However, the part of the depreciation for such property that is otherwise allocated to the qualified contaminated site shall be treated as a qualified environmental cleanup cost.

**When and how to elect.** You elect to deduct environmental cleanup costs by taking the deduction on the income tax return (filed by the due date including extensions) for the tax year in which the costs are paid or incurred. The costs are deducted differently depending on the type of business entity involved.

***Individuals.*** Deduct the environmental cleanup costs on the "Other Expenses" line of Schedule C, E, or F (Form 1040). If the schedule requires you to separately identify each expense included in "Other Expenses" write "Section 198 Election" on the line next to the environmental cleanup costs.

***All other entities.*** All other taxpayers (including S corporations, partnerships, and trusts) deduct the environmental cleanup costs on the "Other Deductions" line of the appropriate federal income tax return. On a schedule attached to the return that separately identifies each expense included in "Other Deductions" write "Section 198 Election" on the line next to the amount for environmental cleanup costs.

***More than one environmental cleanup cost.*** If, for any tax year, you pay or incur more than one environmental cleanup cost, you can elect to deduct one or more of such expenditures for that year. You can elect to deduct one expenditure and elect to capitalize another expenditure (whether or not they are of the same type or paid or incurred with respect to the same qualified contaminated site). An election to deduct an expenditure for one year has no effect on other years. You must make a separate election for each year in which you intend to deduct qualified environmental cleanup costs.

**Recapture.** This deduction may have to be recaptured as ordinary income under section 1245 when you sell or otherwise dispose of the property that would have received an addition to basis if you had not elected to deduct the expenditure. For more information on recapturing the deduction, see *Depreciation and amortization* under *Gain Treated as Ordinary Income* in Publication 544.

**More information.** For more information about the environmental cleanup cost deduction, see Internal Revenue Code section 198.

# Business Start-Up and Organizational Costs

Business start-up and organizational costs are generally capital expenditures. However, you can elect to deduct up to $5,000 of business start-up and $5,000 of organizational costs paid or incurred after October 22, 2004. The $5,000 deduction is reduced by the amount your total start-up or organizational costs exceed $50,000. Any remaining costs must be amortized. For information about amortizing start-up and organizational costs, see chapter 9.

Start-up costs include any amounts paid or incurred in connection with creating an active trade or business or investigating the creation or acquisition of an active trade or business. Organizational costs include the costs of creating a corporation. For more information on start-up and organizational costs, see chapter 9.

**How to make the election.** You elect to deduct the start-up or organizational costs by claiming the deduction on the income tax return (filed by the due date including extensions) for the tax year in which the active trade or business begins. However, if you timely filed your return for the year without making the election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Clearly indicate the election on your amended return and write "Filed pursuant to section 301.9100-2." File the amended return at the same address you filed the original return. The election applies when computing taxable income for the current tax year and all subsequent years.

# Reforestation Costs

Reforestation costs are generally capital expenditures. However, you can elect to deduct up to $10,000 ($5,000 if married filing separately; $0 for a trust) of qualifying reforestation costs paid or incurred after October 22, 2004, for each qualified timber property. This limit is increased for small timber producers with qualified timber property located in certain areas affected by Hurricanes Katrina, Rita, and Wilma. For more information, see Publication 4492. The remaining costs can be amortized over an 84-month period. For information about amortizing reforestation costs see chapter 9.

Qualifying reforestation costs are the direct costs of planting or seeding for forestation or reforestation. Qualified timber property is property that contains trees in significant commercial quantities. See chapter 9 for more information on qualifying reforestation costs and qualified timber property.

**How to make the election.** You elect to deduct qualifying reforestation costs by claiming the deduction on your timely filed income tax return (including extensions) for the tax year the expenses were paid or incurred. However, if you timely filed your return for the year without making the election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Clearly indicate the election on your amended return and write "Filed pursuant to section 301.9100-2." File the amended return at the same address you filed the original return. The election applies when computing taxable income for the current tax year and all subsequent years.

For additional information on reforestation costs, see chapter 9.

**Recapture.** This deduction may have to be recaptured as ordinary income under section 1245 when you sell or otherwise dispose of the property that would have received an addition to basis if you had not elected to deduct the expenditure. For more information on recapturing the deduction, see *Depreciation and amortization* under *Gain Treated as Ordinary Income* in Publication 544.

# Retired Asset Removal Costs

If you retire and remove a depreciable asset in connection with the installation or production of a replacement asset, you can deduct the costs of removing the retired asset. However, if you replace a component (part) of a depreciable asset, capitalize the removal costs if the replacement is an improvement and deduct the costs if the replacement is a repair.

# Barrier Removal Costs

The cost of an improvement to a business asset is normally a capital expense. However, you can elect to deduct the costs of making a facility or public transportation vehicle more accessible to and usable by those who are disabled or elderly. You must own or lease the facility or vehicle for use in connection with your trade or business.

A facility is all or any part of buildings, structures, equipment, roads, walks, parking lots, or similar real or personal property. A public transportation vehicle is a vehicle, such as a bus or railroad car, that provides transportation service to the public (including service for your customers, even if you are not in the business of providing transportation services).

You cannot deduct any costs that you paid or incurred to completely renovate or build a facility or public transportation vehicle or to replace depreciable property in the normal course of business.

**Deduction limit.** The most you can deduct as a cost of removing barriers to the disabled and the elderly for any tax year is $15,000. However, you can add any costs over this limit to the basis of the property and depreciate these excess costs.

**Partners and partnerships.** The $15,000 limit applies to a partnership and also to each partner in the partnership. A partner can allocate the $15,000 limit in any manner among the partner's individually incurred costs and the partner's distributive share of partnership costs. If the partner cannot deduct the entire share of partnership costs, the partnership can add any costs not deducted to the basis of the improved property.

A partnership must be able to show that any amount added to basis was not deducted by the

partner and that it was over a partner's $15,000 limit (as determined by the partner). If the partnership cannot show this, it is presumed that the partner was able to deduct the distributive share of the partnership's costs in full.

***Example.*** John Duke's distributive share of ABC partnership's deductible expenses for the removal of architectural barriers was $14,000. John had $12,000 of similar expenses in his sole proprietorship. He elected to deduct $7,000 of them. John allocated the remaining $8,000 of the $15,000 limit to his share of ABC's expenses. John can add the excess $5,000 of his own expenses to the basis of the property used in his business. Also, if ABC can show that John could not deduct $6,000 ($14,000 – $8,000) of his share of the partnership's expenses because of how John applied the limit, ABC can add $6,000 to the basis of its property.

**Qualification standards.** You can deduct your costs as a current expense only if the barrier removal meets the guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board under the Americans with Disabilities Act (ADA) of 1990. You can view the Americans with Disabilities Act at *www.usdoj.gov/crt/ada/pubs/ada.txt*.

The following is a list of some architectural barrier removal costs that can be deducted.

- Ground and floor surfaces.
- Walks.
- Parking lots.
- Ramps.
- Entrances.
- Doors and doorways.
- Stairs.
- Floors.
- Toilet rooms.
- Water fountains.
- Telephones.
- Elevators.
- Controls.
- Signage.
- Alarms.
- Protruding objects.
- Symbols of accessibility.

You can find the ADA guidelines and requirements for architectural barrier removal at *www.usdoj.gov/crt/ada/reg3a.html*.

The following is a list of some deductible transportation barrier removal costs.

- Rail facilities.
- Buses.
- Rapid and light rail vehicles.

You can find the guidelines and requirements for transportation barrier removal at *www.fta.dot.gov/14534_5608_ENG_HTML.htm.*

Also, you can access the ADA website at *www.ada.gov* for additional information.

***Other barrier removals.*** To be deductible, expenses of removing any barrier not covered by the above standards must meet all three of the following tests.

1. The removed barrier must be a substantial barrier to access or use of a facility or public transportation vehicle by persons who have a disability or are elderly.
2. The removed barrier must have been a barrier for at least one major group of persons who have a disability or are elderly (such as people who are blind, deaf, or wheelchair users).
3. The barrier must be removed without creating any new barrier that significantly impairs access to or use of the facility or vehicle by a major group of persons who have a disability or are elderly.

**How to make the election.** If you elect to deduct your costs for removing barriers to the disabled or the elderly, claim the deduction on your income tax return (partnership return for partnerships) for the tax year the expenses were paid or incurred. Identify the deduction as a separate item. The election applies to all the qualifying costs you have during the year, up to the $15,000 limit. If you make this election, you must maintain adequate records to support your deduction.

For your election to be valid, you generally must file your return by its due date, including extensions. However, if you timely filed your return for the year without making the election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Clearly indicate the election on your amended return and write "Filed pursuant to section 301.9100-2." File the amended return at the same address you filed the original return. Your election is irrevocable after the due date, including extensions, of your return.

**Disabled access credit.** If you make your business accessible to persons with disabilities and your business is an eligible small business, you may be able to claim the disabled access credit. If you choose to claim the credit, you must reduce the amount you deduct or capitalize by the amount of the credit.

For more information about the disabled access credit, see Form 8826.

# 9.

# Amortization

## What's New

**Disposition of multiple section 197 intangibles.** Multiple section 197 intangibles disposed of after August 8, 2005, in a single transaction or a series of related transactions, are treated as a single asset for purposes of recapture. See *Disposition of Section 197 Intangibles,* later.

**Geological and geophysical costs.** You can amortize certain geological and geophysical costs paid or incurred in tax years beginning after August 8, 2005, ratably over a 24-month period. See *Geological and Geophysical Costs,* later.

**Certain atmospheric pollution control facilities.** You can elect to amortize certain atmospheric pollution control facilities placed in service after April 11, 2005, over an 84-month period. See *Pollution Control Facilities,* later.

## Introduction

Amortization is a method of recovering (deducting) certain capital costs over a fixed period of time. It is similar to the straight line method of depreciation.

The various amortizable costs covered in this chapter are included in the list below. However, this chapter does not discuss amortization of bond premium. For information on that topic, see chapter 3 of Publication 550.

### Topics

This chapter discusses:

- Deducting amortization
- Amortizing costs of going into business
- Amortizing costs of getting a lease
- Amortizing costs of section 197 intangibles
- Amortizing reforestation costs
- Amortizing costs of geological and geophysical costs
- Amortizing costs of pollution control facilities
- Amortizing costs of research and experimentation
- Amortizing costs of certain tax preferences

### Useful Items

You may want to see:

**Publication**

- ❑ **544** Sales and Other Dispositions of Assets
- ❑ **550** Investment Income and Expenses
- ❑ **946** How To Depreciate Property

**Form (and Instructions)**

- ❑ **3468** Investment Credit
- ❑ **4562** Depreciation and Amortization
- ❑ **4626** Alternative Minimum Tax — Corporations
- ❑ **6251** Alternative Minimum Tax—Individuals

See chapter 14 for information about getting publications and forms.

# How To Deduct Amortization

You deduct amortization that begins during the current year by completing Part VI of Form 4562 and attaching it to your current year's return.

For a later year, do not report your deduction for amortization on Form 4562 unless you begin to amortize a different amortizable item in that year. In that case, list on the Form 4562 not only the item you are beginning to amortize in the later year, but any items you had previously begun to amortize and are still amortizing. For example, you began amortizing one lease in 2004, and a second lease in 2005. You would show the second lease on line 42 of the 2005 Form 4562, and the first on line 43.

If you do not have to report amortization on Form 4562 for years after the year the amortization begins, deduct amortization directly on the "Other expenses" line of Schedule C or F (Form 1040) or the "Other deductions" line of Form 1065, 1120, 1120-A, or 1120-S. However, if you are amortizing reforestation costs, see *Where to report* under *Reforestation Costs,* later.

# Going Into Business

When you go into business, treat all costs you incur to get your business started as capital expenses. Capital expenses are part of your basis in the business. Generally, you recover costs for particular assets through depreciation deductions. You generally cannot recover other costs until you sell the business or otherwise go out of business.

However, you can elect to amortize certain costs for setting up and organizing your business. For costs paid or incurred before October 23, 2004, you can elect an amortization period of 60 months or more. For costs paid or incurred after October 22, 2004, you can elect to deduct a limited amount of start-up and organizational costs (see chapter 8). The costs that are not deducted currently can be amortized ratably over a 180-month period. The amortization period starts with the month your active trade or business begins.

The cost must qualify as one of the following.

- A business start-up cost.
- An organizational cost for a corporation.
- An organizational cost for a partnership.

## Business Start-Up Costs

Start-up costs are costs for creating an active trade or business or investigating the creation or acquisition of an active trade or business. Start-up costs include any amounts paid or incurred in connection with any activity engaged in for profit and for the production of income in anticipation of the activity becoming an active trade or business.

**Qualifying costs.** A start-up cost is amortizable if it meets both the following tests.

- It is a cost you could deduct if you paid or incurred it to operate an existing active trade or business (in the same field as the one you entered into).
- It is a cost you pay or incur before the day your active trade or business begins.

Start-up costs include costs for the following items.

- An analysis or survey of potential markets, products, labor supply, transportation facilities, etc.
- Advertisements for the opening of the business.
- Salaries and wages for employees who are being trained and their instructors.
- Travel and other necessary costs for securing prospective distributors, suppliers, or customers.
- Salaries and fees for executives and consultants, or for similar professional services.

**Nonqualifying costs.** Start-up costs do not include deductible interest, taxes, or research and experimental costs. See *Research and Experimental Costs,* later.

**Purchasing an active trade or business.** Amortizable start-up costs for purchasing an active trade or business include only investigative costs incurred in the course of a general search for or preliminary investigation of the business. These are the costs that help you decide whether to purchase a new business and which active business to purchase. Costs you incur in an attempt to purchase a specific business are capital expenses that you cannot amortize.

***Example.*** In June, you hired an accounting firm and a law firm to assist you in the potential purchase of XYZ. They researched XYZ's industry and analyzed the financial projections of XYZ. In September, the law firm prepared and submitted a letter of intent to XYZ. The letter stated that a binding commitment would result only after a purchase agreement was signed. The law firm and accounting firm continued to provide services including a review of XYZ's books and records and the preparation of a purchase agreement. In October, you signed a purchase agreement with XYZ.

The costs to investigate the business before submitting the letter of intent to XYZ are amortizable investigative costs. The costs for services after that time relate to the attempt to purchase the business and must be capitalized.

**Disposition of business.** If you completely dispose of your business before the end of the amortization period, you can deduct any remaining deferred start-up costs. However, you can deduct these deferred start-up costs only to the extent they qualify as a loss from a business.

## Costs of Organizing a Corporation

The costs of organizing a corporation are the direct costs of creating the corporation.

**Qualifying costs.** You can amortize an organizational cost only if it meets all the following tests.

- It is for the creation of the corporation.
- It is chargeable to a capital account.
- It could be amortized over the life of the corporation if the corporation had a fixed life.
- It is incurred before the end of the first tax year in which the corporation is in business. A corporation using the cash method of accounting can amortize organizational costs incurred within the first tax year, even if it does not pay them in that year.

The following are examples of organizational costs.

- The cost of temporary directors.
- The cost of organizational meetings.
- State incorporation fees.
- The cost of accounting services for setting up the corporation.
- The cost of legal services (such as drafting the charter, bylaws, terms of the original stock certificates, and minutes of organizational meetings).

**Nonqualifying costs.** The following costs are not organizational costs. They are capital expenses that you cannot amortize.

- Costs for issuing and selling stock or securities, such as commissions, professional fees, and printing costs.
- Costs associated with the transfer of assets to the corporation.

## Costs of Organizing a Partnership

The costs of organizing a partnership are the direct costs of creating the partnership.

**Qualifying costs.** You can amortize an organizational cost only if it meets all the following tests.

- It is for the creation of the partnership and not for starting or operating the partnership trade or business.
- It is chargeable to a capital account.
- It could be amortized over the life of the partnership if the partnership had a fixed life.
- It is incurred by the due date of the partnership return (excluding extensions) for the first tax year in which the partnership is in business. However, if the partnership uses the cash method of accounting and pays the cost after the end of its first tax year, see *Cash method partnership* under *How To Amortize,* later.
- It is for a type of item normally expected to benefit the partnership throughout its entire life.

Organizational costs include the following fees.

- Legal fees for services incident to the organization of the partnership, such as negotiation and preparation of the partnership agreement.

- Accounting fees for services incident to the organization of the partnership.
- Filing fees.

**Nonqualifying costs.** The following costs cannot be amortized.

- The cost of acquiring assets for the partnership or transferring assets to the partnership.
- The cost of admitting or removing partners, other than at the time the partnership is first organized.
- The cost of making a contract concerning the operation of the partnership trade or business (including a contract between a partner and the partnership).
- The costs for issuing and marketing interests in the partnership (such as brokerage, registration, and legal fees and printing costs). These "syndication fees" are capital expenses that cannot be depreciated or amortized.

**Liquidation of partnership.** If a partnership is liquidated before the end of the amortization period, the unamortized amount of qualifying organizational costs can be deducted in the partnership's final tax year. However, these costs can be deducted only to the extent they qualify as a loss from a business.

## How To Amortize

You deduct start-up and organizational costs in equal amounts over the applicable amortization period (discussed earlier). You can choose an amortization period for start-up costs that is different from the period you choose for organizational costs, as long as both are not less than the applicable amortization period. Once you choose an amortization period, you cannot change it.

To figure your deduction, divide your total start-up or organizational costs by the months in the amortization period. The result is the amount you can deduct for each month.

**Cash method partnership.** A partnership using the cash method of accounting cannot deduct an organizational cost it has not paid by the end of the tax year. However, any cost the partnership could have deducted as an organizational cost in an earlier tax year (if it had been paid that year) can be deducted in the tax year of payment.

### How To Make the Election

To elect to amortize start-up or organizational costs, you must complete and attach Form 4562 and an accompanying statement (explained later) to your return for the first tax year you are in business. If you have both start-up and organizational costs, attach a separate statement to your return for each type of cost.

Generally, you must file the return by the due date (including any extensions). However, if you timely filed your return for the year without making the election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). For more information, see the instructions for Part VI of Form 4562.

Once you make the election to amortize start-up or organizational costs, you cannot revoke it.

If your business is organized as a corporation or partnership, only your corporation or partnership can elect to amortize its start-up or organizational costs. A shareholder or partner cannot make this election. You, as shareholder or partner, cannot amortize any costs you incur in setting up your corporation or partnership. The corporation or partnership can amortize these costs.

However, you, as an individual, can elect to amortize costs you incur to investigate an interest in an existing partnership. These costs qualify as business start-up costs if you acquire the partnership interest.

**Start-up costs election statement.** If you elect to amortize your start-up costs, attach a separate statement that contains the following information.

- A description of the business to which the start-up costs relate.
- A description of each start-up cost incurred.
- The month your active business began (or was acquired).
- The number of months in your amortization period.

***Filing the statement early.*** You can elect to amortize your start-up costs by filing the statement with a return for any tax year before the year your active business begins. If you file the statement early, the election becomes effective in the month of the tax year your active business begins.

***Revised statement.*** You can file a revised statement to include any start-up costs not included in your original statement. However, you cannot include on the revised statement any cost you previously treated on your return as a cost other than a start-up cost. You can file the revised statement with a return filed after the return on which you elected to amortize your start-up costs.

**Organizational costs election statement.** If you elect to amortize your corporation's or partnership's organizational costs, attach a separate statement that contains the following information.

- A description of each cost.
- The amount of each cost.
- The date each cost was incurred.
- The month your corporation or partnership began active business (or acquired the business).
- The number of months in your amortization period.

***Partnerships.*** The statement prepared for a cash basis partnership must also indicate the amount paid before the end of the year for each cost.

You do not need to separately list any partnership organizational cost that is less than $10. Instead, you can list the total amount of these costs with the dates the first and last costs were incurred.

After a partnership makes the election to amortize organizational costs, it can later file an amended return to include additional organizational costs not included in the partnership's original return and statement.

# Getting a Lease

If you get a lease for business property, you recover the cost by amortizing it over the term of the lease. The term of the lease for amortization purposes generally includes all renewal options (and any other period for which you and the lessor reasonably expect the lease to be renewed). However, renewal periods are not included if 75% or more of the cost of getting the lease is for the term of the lease remaining on the acquisition date (not including any period for which you may choose to renew, extend, or continue the lease).

Enter your deduction in Part VI of Form 4562 if you are deducting amortization that begins during the current year, or on the appropriate line of your tax return if you are not otherwise required to file Form 4562.

For more information on the costs of getting a lease, see *Cost of Getting a Lease* in chapter 4.

# Section 197 Intangibles

You must generally amortize over 15 years the capitalized costs of "section 197 intangibles" you acquired after August 10, 1993. You must amortize these costs if you hold the section 197 intangibles in connection with your trade or business or in an activity engaged in for the production of income.


*You may not be able to amortize section 197 intangibles acquired in a transaction that did not result in a significant change in ownership or use. See* Anti-Churning Rules, *later.*

Your amortization deduction each year is the applicable part of the intangible's adjusted basis (for purposes of determining gain), figured by amortizing it ratably over 15 years (180 months). The 15-year period begins with the later of:

- The month the intangible is acquired, or
- The month the trade or business or activity engaged in for the production of income begins.

You cannot deduct amortization for the month you dispose of the intangible.

If you pay or incur an amount that increases the basis of an amortizable section 197 intangible after the 15-year period begins, amortize it over the remainder of the 15-year period beginning with the month the basis increase occurs.

You are not allowed any other depreciation or amortization deduction for an amortizable section 197 intangible.

**Tax-exempt use property subject to a lease.** The amortization period for any section 197 intangible leased under a lease agreement entered into after March 12, 2004, to a tax-exempt

organization, governmental unit, or foreign person or entity (other than a partnership), shall not be less than 125 percent of the lease term. See section 197(f)(10) of the Internal Revenue Code.

**Cost attributable to other property.** The rules for section 197 intangibles do not apply to any amount that is included in determining the cost of property that is not a section 197 intangible. For example, if the cost of computer software is not separately stated from the cost of hardware or other tangible property and you consistently treat it as part of the cost of the hardware or other tangible property, these rules do not apply. Similarly, none of the cost of acquiring real property held for the production of rental income is considered the cost of goodwill, going concern value, or any other section 197 intangible.

## Section 197 Intangibles Defined

The following assets are section 197 intangibles.

1. Goodwill.
2. Going concern value.
3. Workforce in place.
4. Business books and records, operating systems, or any other information base, including lists or other information concerning current or prospective customers.
5. A patent, copyright, formula, process, design, pattern, know-how, format, or similar item.
6. A customer-based intangible.
7. A supplier-based intangible.
8. Any item similar to items (3) through (7).
9. A license, permit, or other right granted by a governmental unit or agency (including issuances and renewals).
10. A covenant not to compete entered into in connection with the acquisition of an interest in a trade or business.
11. Any franchise, trademark, or trade name.
12. A contract for the use of, or a term interest in, any item in this list.

CAUTION *You cannot amortize any of the intangibles listed in items (1) through (8) that you created rather than acquired unless you created them in acquiring assets that make up a trade or business or a substantial part of a trade or business.*

**Goodwill.** This is the value of a trade or business based on expected continued customer patronage due to its name, reputation, or any other factor.

**Going concern value.** This is the additional value of a trade or business that attaches to property because the property is an integral part of an ongoing business activity. It includes value based on the ability of a business to continue to function and generate income even though there is a change in ownership (but does not include any other section 197 intangible). It also includes value based on the immediate use or availability of an acquired trade or business, such as the use of earnings during any period in which the business would not otherwise be available or operational.

**Workforce in place, etc.** This includes the composition of a workforce (for example, its experience, education, or training). It also includes the terms and conditions of employment, whether contractual or otherwise, and any other value placed on employees or any of their attributes.

For example, you must amortize the part of the purchase price of a business that is for the existence of a highly skilled workforce. Also, you must amortize the cost of acquiring an existing employment contract or relationship with employees or consultants.

**Business books and records, etc.** This includes the intangible value of technical manuals, training manuals or programs, data files, and accounting or inventory control systems. It also includes the cost of customer lists, subscription lists, insurance expirations, patient or client files, and lists of newspaper, magazine, radio, and television advertisers.

**Patents, copyrights, etc.** This includes package design, computer software, and any interest in a film, sound recording, videotape, book, or other similar property, except as discussed later under *Assets That Are Not Section 197 Intangibles.*

**Customer-based intangible.** This is the composition of market, market share, and any other value resulting from the future provision of goods or services because of relationships with customers in the ordinary course of business. For example, you must amortize the part of the purchase price of a business that is for the existence of the following intangibles.

- A customer base.
- A circulation base.
- An undeveloped market or market growth.
- Insurance in force.
- A mortgage servicing contract.
- An investment management contract.
- Any other relationship with customers involving the future provision of goods or services.

Accounts receivable or other similar rights to income for goods or services provided to customers before the acquisition of a trade or business are not section 197 intangibles.

**Supplier-based intangible.** This is the value resulting from the future acquisition of goods or services used or sold by the business because of business relationships with suppliers.

For example, you must amortize the part of the purchase price of a business that is for the existence of the following intangibles.

- A favorable relationship with distributors (such as favorable shelf or display space at a retail outlet).
- A favorable credit rating.
- A favorable supply contract.

**Government-granted license, permit, etc.** This is any right granted by a governmental unit or an agency or instrumentality of a governmental unit. For example, you must amortize the capitalized costs of acquiring (including issuing or renewing) a liquor license, a taxicab medallion or license, or a television or radio broadcasting license.

**Covenant not to compete.** Section 197 intangibles include a covenant not to compete (or similar arrangement) entered into in connection with the acquisition of an interest in a trade or business, or a substantial portion of a trade or business. An interest in a trade or business includes an interest in a partnership or a corporation engaged in a trade or business.

An arrangement that requires the former owner to perform services (or to provide property or the use of property) is not similar to a covenant not to compete to the extent the amount paid under the arrangement represents reasonable compensation for those services or for that property or its use.

**Franchise, trademark, or trade name.** A franchise, trademark, or trade name is a section 197 intangible. You must amortize its purchase or renewal costs, other than certain contingent payments that you can deduct currently. For information on currently deductible contingent payments, see chapter 13.

***Professional sports franchise.*** A franchise engaged in professional sports and any intangible assets acquired in connection with acquiring the franchise (including player contracts) is a section 197 intangible amortizable over a 15-year period.

**Contract for the use of, or a term interest in, a section 197 intangible.** Section 197 intangibles include any right under a license, contract, or other arrangement providing for the use of any section 197 intangible. It also includes any term interest in any section 197 intangible, whether the interest is outright or in trust.

## Assets That Are Not Section 197 Intangibles

The following assets are not section 197 intangibles.

1. Any interest in a corporation, partnership, trust, or estate.
2. Any interest under an existing futures contract, foreign currency contract, notional principal contract, interest rate swap, or similar financial contract.
3. Any interest in land.
4. Most computer software. (See *Computer software,* later.)
5. Any of the following assets not acquired in connection with the acquisition of a trade or business or a substantial part of a trade or business.
   a. An interest in a film, sound recording, video tape, book, or similar property.
   b. A right to receive tangible property or services under a contract or from a governmental agency.
   c. An interest in a patent or copyright.
   d. Certain rights that have a fixed duration or amount. (See *Rights of fixed duration or amount,* later.)

6. An interest under either of the following.
   a. An existing lease or sublease of tangible property.
   b. A debt that was in existence when the interest was acquired.
7. A right to service residential mortgages unless the right is acquired in connection with the acquisition of a trade or business or a substantial part of a trade or business.
8. Certain transaction costs incurred by parties to a corporate organization or reorganization in which any part of a gain or loss is not recognized.

Intangible property that is not amortizable under the rules for section 197 intangibles can be depreciated if it meets certain requirements. You generally must use the straight line method over its useful life. For certain intangibles, the depreciation period is specified in the law and regulations. For example, the depreciation period for computer software that is not a section 197 intangible is generally 36 months.

For more information on depreciating intangible property, see *Intangible Property* under *Can You Use MACRS To Depreciate Your Property* in chapter 1 of Publication 946.

**Computer software.** Section 197 intangibles do not include the following types of computer software.

1. Software that meets all the following requirements.
   a. It is, or has been, readily available for purchase by the general public.
   b. It is subject to a nonexclusive license.
   c. It has not been substantially modified. This requirement is considered met if the cost of all modifications is not more than the greater of 25% of the price of the publicly available unmodified software or $2,000.
2. Software that is not acquired in connection with the acquisition of a trade or business or a substantial part of a trade or business.

***Computer software defined.*** Computer software includes all programs designed to cause a computer to perform a desired function. It also includes any database or similar item that is in the public domain and is incidental to the operation of qualifying software.

**Rights of fixed duration or amount.** Section 197 intangibles do not include any right under a contract or from a governmental agency if the right is acquired in the ordinary course of a trade or business (or in an activity engaged in for the production of income) but not as part of a purchase of a trade or business and either:

- Has a fixed life of less than 15 years, or
- Is of a fixed amount that, except for the rules for section 197 intangibles, would be recovered under a method similar to the unit-of-production method of cost recovery.

However, this does not apply to the following intangibles.

- Goodwill.
- Going concern value.
- A covenant not to compete.
- A franchise, trademark, or trade name.
- A customer-related information base, customer-based intangible, or similar item.

## Safe Harbor for Creative Property Costs

If you are engaged in the trade or business of film production, you may be able to amortize the creative property costs for properties not set for production within 3 years of the first capitalized transaction. You may amortize these costs ratably over a 15-year period beginning on the first day of the second half of the tax year in which you properly write off the costs for financial accounting purposes. If, during the 15-year period, you dispose of the creative property rights, you must continue to amortize the costs over the remainder of the 15-year period.

Creative property costs include costs paid or incurred to acquire and develop screenplays, scripts, story outlines, motion picture production rights to books and plays, and other similar properties for purposes of potential future film development, production, and exploitation.

Amortize these costs using the rules of Revenue Procedure 2004-36. For more information, see Revenue Procedure 2004-36 on page 1063 of Internal Revenue Bulletin 2004-24, available at *www.irs.gov/pub/irs-irbs/irb04-24.pdf*.


*A change in the treatment of creative property costs is a change in method of accounting.*

## Anti-Churning Rules

Anti-churning rules prevent you from amortizing most section 197 intangibles if the transaction in which you acquired them did not result in a significant change in ownership or use. These rules apply to goodwill and going concern value, and to any other section 197 intangible that is not otherwise depreciable or amortizable.

Under the anti-churning rules, you cannot use 15-year amortization for the intangible if any of the following conditions apply.

1. You or a related person (defined later) held or used the intangible at any time from July 25, 1991, through August 10, 1993.
2. You acquired the intangible from a person who held it at any time during the period in (1) and, as part of the transaction, the user did not change.
3. You granted the right to use the intangible to a person (or a person related to that person) who held or used it at any time during the period in (1). This applies only if the transaction in which you granted the right and the transaction in which you acquired the intangible are part of a series of related transactions. See *Related person*, later, for information about the kinds of persons that are related.

**Exceptions.** The anti-churning rules do not apply in the following situations.

- You acquired the intangible from a decedent and its basis was stepped up to its fair market value.
- The intangible was amortizable as a section 197 intangible by the seller or transferor you acquired it from. This exception does not apply if the transaction in which you acquired the intangible and the transaction in which the seller or transferor acquired it are part of a series of related transactions.
- The gain-recognition exception, discussed later, applies.

**Related person.** For purposes of the anti-churning rules, the following are related persons.

- An individual and his or her brothers, sisters, half-brothers, half-sisters, spouse, ancestors (parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.).
- A corporation and an individual who owns, directly or indirectly, more than 20% of the value of the corporation's outstanding stock.
- Two corporations that are members of the same controlled group as defined in section 1563(a) of the Internal Revenue Code, except that "more than 20%" is substituted for "at least 80%" in that definition and the determination is made without regard to subsections (a)(4) and (e)(3)(C) of section 1563. (For an exception, see section 1.197-2(h)(6)(iv) of the regulations.)
- A trust fiduciary and a corporation if more than 20% of the value of the corporation's outstanding stock is owned, directly or indirectly, by or for the trust or grantor of the trust.
- The grantor and fiduciary, and the fiduciary and beneficiary, of any trust.
- The fiduciaries of two different trusts, and the fiduciaries and beneficiaries of two different trusts, if the same person is the grantor of both trusts.
- The executor and beneficiary of an estate.
- A tax-exempt educational or charitable organization and a person who directly or indirectly controls the organization (or whose family members control it).
- A corporation and a partnership if the same persons own more than 20% of the value of the outstanding stock of the corporation and more than 20% of the capital or profits interest in the partnership.
- Two S corporations, and an S corporation and a regular corporation, if the same persons own more than 20% of the value of the outstanding stock of each corporation.
- Two partnerships if the same persons own, directly or indirectly, more than 20% of the capital or profits interests in both partnerships.
- A partnership and a person who owns, directly or indirectly, more than 20% of the capital or profits interests in the partnership.

- Two persons who are engaged in trades or businesses under common control (as described in section 41(f)(1) of the Internal Revenue Code).

***When to determine relationship.*** Persons are treated as related if the relationship existed at the following time.

- In the case of a single transaction, immediately before or immediately after the transaction in which the intangible was acquired.
- In the case of a series of related transactions (or a series of transactions that comprise a qualified stock purchase under section 338(d)(3) of the Internal Revenue Code), immediately before the earliest transaction or immediately after the last transaction.

***Ownership of stock.*** In determining whether an individual directly or indirectly owns any of the outstanding stock of a corporation, the following rules apply.

***Rule 1.*** Stock directly or indirectly owned by or for a corporation, partnership, estate, or trust is considered owned proportionately by or for its shareholders, partners, or beneficiaries.

***Rule 2.*** An individual is considered to own the stock directly or indirectly owned by or for his or her family. Family includes only brothers and sisters, half-brothers and half-sisters, spouse, ancestors, and lineal descendants.

***Rule 3.*** An individual owning (other than by applying Rule 2) any stock in a corporation is considered to own the stock directly or indirectly owned by or for his or her partner.

***Rule 4.*** For purposes of applying Rule 1, 2, or 3, treat stock constructively owned by a person under Rule 1 as actually owned by that person. Do not treat stock constructively owned by an individual under Rule 2 or 3 as owned by the individual for reapplying Rule 2 or 3 to make another person the constructive owner of the stock.

**Gain-recognition exception.** This exception to the anti-churning rules applies if the person you acquired the intangible from (the transferor) meets both of the following requirements.

- That person would not be related to you (as described under *Related person,* earlier) if the 20% test for ownership of stock and partnership interests were replaced by a 50% test.
- That person chose to recognize gain on the disposition of the intangible and pay income tax on the gain at the highest tax rate. See chapter 2 in Publication 544 for information on making this choice.

If this exception applies, the anti-churning rules apply only to the amount of your adjusted basis in the intangible that is more than the gain recognized by the transferor.

***Notification.*** If the person you acquired the intangible from chooses to recognize gain under the rules for this exception, that person must notify you in writing by the due date of the return on which the choice is made.

**Anti-abuse rule.** You cannot amortize any section 197 intangible acquired in a transaction for which the principal purpose was either of the following.

- To avoid the requirement that the intangible be acquired after August 10, 1993.
- To avoid any of the anti-churning rules.

**More information.** For more information about the anti-churning rules, including additional rules for partnerships, see section 1.197-2(h) of the regulations.

## Incorrect Amount of Amortization Deducted

If you did not deduct the correct amortization for a section 197 intangible in any year, you may be able to make a correction for that year by filing an amended return. See *Amended Return,* next. If you are not allowed to make the correction on an amended return, you can change your accounting method to claim the correct amortization. See *Changing Your Accounting Method,* later.

### Amended Return

If you did not deduct the correct amortization, you can file an amended return to correct the following.

- A mathematical error made in any year.
- A posting error made in any year.
- An amortization deduction for a section 197 intangible for which you have not adopted a method of accounting.

**When to file.** If an amended return is allowed, you must file it by the later of the following dates.

- 3 years from the date you filed your original return for the year in which you did not deduct the correct amount. (A return filed early is considered filed on the due date.)
- 2 years from the time you paid your tax for that year.

### Changing Your Accounting Method

Generally, you must get IRS approval to change your method of accounting. File Form 3115, Application for Change in Accounting Method, to request a change to a permissible method of accounting for amortization.

The following are examples of a change in method of accounting for amortization.

- A change in the amortization method, period of recovery, or convention of an amortizable asset.
- A change in the accounting for amortizable assets from a single asset account to a multiple asset account (pooling), or vice versa.
- A change in the accounting for amortizable assets from one type of multiple asset account to a different type of multiple asset account.

Changes in amortization that are not a change in method of accounting include the following.

- A change in computing amortization in the tax year in which your use of the asset changes.
- An adjustment in the useful life of an amortizable asset.
- Generally, the making of a late amortization election or the revocation of a timely valid amortization election.
- Any change in the placed-in-service date of an amortizable asset.

See section 1.446-1T(e)(2)(d)(ii) of the Regulations for more information and examples.

**Automatic approval.** In some instances, you may be able to get automatic approval from the IRS to change your method of accounting for amortization. For a list of automatic accounting method changes, see the Instructions for Form 3115. Also see the Instructions for Form 3115 for more information on getting approval, automatic approval procedures, and a list of exceptions to the automatic approval process.

In addition, Revenue Procedure 2006-12 on page 310 of Internal Revenue Bulletin 2006-3, available at *www.irs.gov/pub/irs-irbs/irb06-03.pdf*, contain additional guidance.

## Disposition of Section 197 Intangibles

A section 197 intangible is treated as depreciable property used in your trade or business. If you held the intangible for more than 1 year, any gain on its disposition, up to the amount of allowable amortization, is ordinary income (section 1245 gain). If multiple section 197 intangibles are disposed of in a single transaction or a series of related transactions, treat all of the section 197 intangibles as if they were a single asset for purposes of determining the amount of gain that is ordinary income. Any remaining gain, or any loss, is a section 1231 gain or loss. If you held the intangible 1 year or less, any gain or loss on its disposition is an ordinary gain or loss. For more information on ordinary or capital gain or loss on business property, see chapter 3 in Publication 544.

**Nondeductible loss.** You cannot deduct any loss on the disposition or worthlessness of a section 197 intangible that you acquired in the same transaction (or series of related transactions) as other section 197 intangibles you still have. Instead, increase the adjusted basis of each remaining amortizable section 197 intangible by a proportionate part of the nondeductible loss. Figure the increase by multiplying the nondeductible loss on the disposition of the intangible by the following fraction.

- The numerator is the adjusted basis of each remaining intangible on the date of the disposition.
- The denominator is the total adjusted bases of all remaining amortizable section 197 intangibles on the date of the disposition.

**Covenant not to compete.** A covenant not to compete, or similar arrangement, is not considered disposed of or worthless before you dis-

pose of your entire interest in the trade or business for which you entered into the covenant.

**Nonrecognition transfers.** If you acquire a section 197 intangible in a nonrecognition transfer, you are treated as the transferor with respect to the part of your adjusted basis in the intangible that is not more than the transferor's adjusted basis. You amortize this part of the adjusted basis over the intangible's remaining amortization period in the hands of the transferor. Nonrecognition transfers include transfers to a corporation, partnership contributions and distributions, like-kind exchanges, and involuntary conversions.

In a like-kind exchange or involuntary conversion of a section 197 intangible, you must continue to amortize the part of your adjusted basis in the acquired intangible that is not more than your adjusted basis in the exchanged or converted intangible over the remaining amortization period of the exchanged or converted intangible. Amortize over a new 15-year period the part of your adjusted basis in the acquired intangible that is more than your adjusted basis in the exchanged or converted intangible.

***Example.*** You own a section 197 intangible you have amortized for 4 full years. It has a remaining unamortized basis of $30,000. You exchange the asset plus $10,000 for a like-kind section 197 intangible. The nonrecognition provisions of like-kind exchanges apply. You amortize $30,000 of the $40,000 adjusted basis of the acquired intangible over the 11 years remaining in the original 15-year amortization period for the transferred asset. You amortize the other $10,000 of adjusted basis over a new 15-year period.

# Reforestation Costs

You can elect to deduct a limited amount of reforestation costs paid or incurred during the tax year. See *Reforestation Costs* in chapter 8. You can elect to amortize the qualifying costs that are not deducted currently over an 84-month period. There is no limit on the amount of your amortization deduction for reforestation costs paid or incurred during the tax year.

The election to amortize reforestation costs incurred by a partnership, S corporation, or estate must be made by the partnership, corporation, or estate. A partner, shareholder, or beneficiary cannot make that election.

A partner's or shareholder's share of amortizable costs is figured under the general rules for allocating items of income, loss, deduction, etc., of a partnership or S corporation. The amortizable costs of an estate are divided between the estate and the income beneficiary based on the income of the estate allocable to each.


*A trust cannot elect to amortize reforestation costs and cannot deduct its share of any amortizable reforestation costs of a partnership, S corporation, or estate.*

**Qualifying costs.** Reforestation costs are the direct costs of planting or seeding for forestation or reforestation. Qualifying costs include only those costs you must capitalize and include in the adjusted basis of the property. They include costs for the following items.

- Site preparation.
- Seeds or seedlings.
- Labor.
- Tools.
- Depreciation on equipment used in planting and seeding.

Qualifying costs do not include costs for which the government reimburses you under a cost-sharing program, unless you include the reimbursement in your income.

**Qualified timber property.** Qualified timber property is property that contains trees in significant commercial quantities. It can be a woodlot or other site that you own or lease. The property qualifies only if it meets all the following requirements.

- It is located in the United States.
- It is held for the growing and cutting of timber you will either use in, or sell for use in, the commercial production of timber products.
- It consists of at least one acre planted with tree seedlings in the manner normally used in forestation or reforestation.

Qualified timber property does not include property on which you have planted shelter belts or ornamental trees, such as Christmas trees.

**Amortization period.** The 84-month amortization period starts on the first day of the first month of the second half of the tax year you incur the costs (July 1 for a calendar year taxpayer), regardless of the month you actually incur the costs. You can claim amortization deductions for no more than 6 months of the first and last (eighth) tax years of the period.

**Life tenant and remainderman.** If one person holds the property for life with the remainder going to another person, the life tenant is entitled to the full amortization for qualifying reforestation costs incurred by the life tenant. Any remainder interest in the property is ignored for amortization purposes.

**Recapture.** If you dispose of qualified timber property within 10 years after the tax year you incur qualifying reforestation expenses, report any gain as ordinary income up to the amortization you took. See chapter 3 of Publication 544 for more information.

**Investment credit.** Amortizable reforestation costs qualify for the investment credit, whether or not they are amortized. See the instructions for Form 3468 for information on the investment credit.

**How to make the election.** To elect to amortize qualifying reforestation costs, complete Part VI of Form 4562 and attach a statement that contains the following information.

- A description of the costs and the dates you incurred them.
- A description of the type of timber being grown and the purpose for which it is grown.

Attach a separate statement for each property for which you amortize reforestation costs.

Generally, you must make the election on a timely filed return (including extensions) for the tax year in which you incurred the costs. However, if you timely filed your return for the year without making the election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Attach Form 4562 and the statement to the amended return and write "Filed pursuant to section 301.9100-2" on Form 4562. File the amended return at the same address you filed the original return.

**Where to report.** The following chart shows where to report your amortization deduction for qualifying reforestation costs after you enter it on Form 4562.

| If you file . . . | The deduction goes on . . . |
|---|---|
| Schedule C (Form 1040) | Line 27 |
| Schedule F (Form 1040) | Line 34 |
| Form 1120 | Line 26 |
| Form 1120-A | Line 22 |
| Form 1120S | Schedules K and K-1 |
| Form 1065 | Schedules K and K-1 |
| None of the above | Line 36 of Form 1040 (identify as "RFST") |

You cannot report your amortization deduction on Schedule C-EZ (Form 1040).

***Partner or shareholder.*** If you are a partner in a partnership or a shareholder in an S corporation, see the instructions for Schedule K-1 (Form 1065 or Form 1120S) for information on where to report any allocated amortization for qualifying reforestation costs.

***Estate.*** If the estate does not file Schedule C or F for the activity in which the qualifying reforestation costs were incurred, include the amortization deduction on line 15a of Form 1041.

**Revoking the election.** You must get IRS approval to revoke your election to amortize qualifying reforestation costs. Your application to revoke the election must include your name, address, the years for which your election was in effect, and your reason for revoking it. You, or your duly authorized representative, must sign the application and file it at least 90 days before the due date (without extensions) for filing your income tax return for the first tax year for which your election is to end.

Send the application to:

Internal Revenue Service
Associate Chief Counsel
Passthroughs and Special Industries
CC:PSI
1111 Constitution Ave., N.W., IR-5300
Washington, DC 20224

## Geological and Geophysical Costs

For tax years beginning after August 8, 2005, you can amortize the cost of geological and geophysical expenses paid or incurred in connection with oil and gas exploration or development within the U.S. These costs can be amortized ratably over a 24-month period beginning on the mid-point of the tax year in which the expenses were paid or incurred.

If you retire or abandon the property during the 24-month amortization period, no amortization deduction is allowed in the year of retirement or abandonment.

## Pollution Control Facilities

You can elect to amortize the cost of a certified pollution control facility over 60 months. However, see *Atmospheric pollution control facilities placed in service after April 11, 2005,* for an exception. The cost of a pollution control facility that is not eligible for amortization can be depreciated under the regular rules for depreciation. Also, you can claim a special depreciation allowance on a certified pollution control facility that is qualified property even if you elect to amortize its cost. You must reduce its cost (amortizable basis) by the amount of any special allowance you claim. See chapter 3 of Publication 946.

A certified pollution control facility is a new identifiable treatment facility used in connection with a plant or other property in operation before 1976, to reduce or control water or atmospheric pollution or contamination. The facility must do so by removing, changing, disposing, storing, or preventing the creation or emission of pollutants, contaminants, wastes, or heat. The facility must be certified by state and federal certifying authorities.

The facility must not significantly increase the output or capacity, extend the useful life, or reduce the total operating costs of the plant or other property. Also, it must not significantly change the nature of the manufacturing or production process or facility.

The federal certifying authority will not certify your property to the extent it appears you will recover (over the property's useful life) all or part of its cost from the profit based on its operation (such as through sales of recovered wastes). The federal certifying authority will describe the nature of the potential cost recovery. You must then reduce the amortizable basis of the facility by this potential recovery.

***New identifiable treatment facility.*** A new identifiable treatment facility is tangible depreciable property that is identifiable as a treatment facility. It does not include a building and its structural components unless the building is exclusively a treatment facility.

**Atmospheric pollution control facilities placed in service after April 11, 2005.** Certain atmospheric pollution control facilities placed in service after April 11, 2005, can be amortized over 84 months. To qualify, the following must apply.

- The facility must be acquired and placed in service after April 11, 2005. If acquired, the original use must begin with you after April 11, 2005.
- The facility must be used in connection with an electric generation plant or other property placed in operation after December 31, 1975, that is primarily coal fired.
- If you construct, reconstruct, or erect the facility, only the basis attributable to the construction, reconstruction, or erection completed after April 11, 2005, qualifies.

**Basis reduction for corporations.** A corporation must reduce the amortizable basis of a pollution control facility by 20% before figuring the amortization deduction.

**More information.** For more information on the amortization of pollution control facilities, see section 169 of the Internal Revenue Code and the related regulations.

## Research and Experimental Costs

You can amortize your research and experimental costs, deduct them as current business expenses, or write them off over a 10-year period. If you elect to amortize these costs, deduct them in equal amounts over 60 months or more. The amortization period begins the month you first receive an economic benefit from the expenditures. For a definition of "research and experimental costs" and information on deducting them as current business expenses, see chapter 8.

**Optional write-off method.** Rather than amortize these costs or deduct them as a current expense, you have the option of deducting (writing off) research and experimental costs ratably over a 10-year period beginning with the tax year in which you incurred the costs.

**Costs you can amortize.** You can amortize costs chargeable to a capital account if you meet both the following requirements.

- You paid or incurred the costs in your trade or business.
- You are not deducting the costs currently.

**How to make the election.** To elect to amortize research and experimental costs, complete Part VI of Form 4562 and attach it to your income tax return. Generally, you must file the return by the due date (including extensions). However, if you timely filed your return for the year without making the election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Attach Form 4562 to the amended return and write "Filed pursuant to section 301.9100-2" on Form 4562. File the amended return at the same address you filed the original return.

Your election is binding for the year it is made and for all later years unless you get IRS approval to change to a different method.

## Optional Write-off of Certain Tax Preferences

You can elect to amortize certain tax preference items over an optional period beginning in the tax year in which you incurred the costs. If you make this election there is no AMT adjustment. The applicable costs and the optional recovery periods are as follows:

- Circulation costs — 3 years,
- Intangible drilling and development costs — 60 months,
- Mining exploration and development costs — 10 years, and
- Research and experimental costs — 10 years.

**How to make the election.** To elect to amortize qualifying costs over the optional recovery period, complete Part VI of Form 4562 and attach a statement containing the following information to your return for the tax year in which the election begins.

- Your name, address, and taxpayer identification number,
- Type of cost and the specific amount of the cost for which you are making the election.

Generally, the election must be made on a timely filed return (including extensions) for the tax year in which you incurred the costs. However, if you timely filed your return for the year without making the election, you can still make the election by filing an amended return within 6 months of the due date of the return (excluding extensions). Attach Form 4562 to the amended return and write "Filed pursuant to section 301.9100-2" on Form 4562. File the amended return at the same address you filed the original return.

**Revoking the election.** You must get IRS consent to revoke your election. Your request to revoke the election must be submitted to the IRS in the form of a letter ruling before the end of the tax year in which the optional recovery period ends. The request must contain all of the information necessary to demonstrate the rare and unusual circumstances that would justify granting revocation. If the request for revocation is approved, any unamortized costs are deductible in the year the revocation is effective.

# 10.

# Depletion

## What's New

**Exception to oil depletion deduction for independent producers.** For tax years ending after August 8, 2005, the 50,000 barrels-per-day limit for purposes of determining if an independent producer of oil or gas can use the percentage depletion method is increased to 75,000 barrels, based on the average, rather than the actual, daily runs for the tax year. See *Refiners who cannot claim percentage depletion*, later.

## Introduction

Depletion is the using up of natural resources by mining, quarrying, drilling, or felling. The depletion deduction allows an owner or operator to account for the reduction of a product's reserves.

There are two ways of figuring depletion: cost depletion and percentage depletion. For mineral property, you generally must use the method that gives you the larger deduction. For standing timber, you must use cost depletion.

### Topics

This chapter discusses:

- Who can claim depletion
- Mineral property
- Timber

## Who Can Claim Depletion?

If you have an economic interest in mineral property or standing timber, you can take a deduction for depletion. More than one person can have an economic interest in the same mineral deposit or timber.

You have an economic interest if both the following apply.

- You have acquired by investment any interest in mineral deposits or standing timber.
- You have a legal right to income from the extraction of the mineral or cutting of the timber to which you must look for a return of your capital investment.

A contractual relationship that allows you an economic or monetary advantage from products of the mineral deposit or standing timber is not, in itself, an economic interest. A production payment carved out of, or retained on the sale of, mineral property is not an economic interest.


*Individuals, corporations, estates, and trusts who claim depletion deductions may be liable for alternative minimum tax.*

## Mineral Property

Mineral property includes oil and gas wells, mines, and other natural deposits (including geothermal deposits). For this purpose, the term "property" means each separate interest you own in each mineral deposit in each separate tract or parcel of land. You can treat two or more separate interests as one property or as separate properties. See section 614 of the Internal Revenue Code and the related regulations for rules on how to treat separate mineral interests.

There are two ways of figuring depletion on mineral property.

- Cost depletion.
- Percentage depletion.

Generally, you must use the method that gives you the larger deduction. However, unless you are an independent producer or royalty owner, you generally cannot use percentage depletion for oil and gas wells. See *Oil and Gas Wells,* later.

### Cost Depletion

To figure cost depletion you must first determine the following.

- The property's basis for depletion.
- The total recoverable units of mineral in the property's natural deposit.
- The number of units of mineral sold during the tax year.

**Basis for depletion.** To figure the property's basis for depletion, subtract all the following from the property's adjusted basis.

1. Amounts recoverable through:
   a. Depreciation deductions,
   b. Deferred expenses (including deferred exploration and development costs), and
   c. Deductions other than depletion.
2. The residual value of land and improvements at the end of operations.
3. The cost or value of land acquired for purposes other than mineral production.

***Adjusted basis.*** The adjusted basis of your property is your original cost or other basis, plus certain additions and improvements, and minus certain deductions such as depletion allowed or allowable and casualty losses. Your adjusted basis can never be less than zero. See Publication 551, Basis of Assets, for more information on adjusted basis.

**Total recoverable units.** The total recoverable units is the sum of the following.

- The number of units of mineral remaining at the end of the year (including units recovered but not sold).
- The number of units of mineral sold during the tax year (determined under your method of accounting, as explained next).

You must estimate or determine recoverable units (tons, pounds, ounces, barrels, thousands of cubic feet, or other measure) of mineral products using the current industry method and the most accurate and reliable information you can obtain.

**Number of units sold.** You determine the number of units sold during the tax year based on your method of accounting. Use the following table to make this determination.

| IF you use ... | THEN the units sold during the year are ... |
|---|---|
| The cash method of accounting | The units sold for which you receive payment during the tax year (regardless of the year of sale). |
| An accrual method of accounting | The units sold based on your inventories and method of accounting for inventory. |

The number of units sold during the tax year does not include any for which depletion deductions were allowed or allowable in earlier years.

**Figuring the cost depletion deduction.** Once you have figured your property's basis for depletion, the total recoverable units, and the number of units sold during the tax year, you can figure your cost depletion deduction by taking the following steps.

| Step | Action | Result |
|---|---|---|
| 1 | Divide your property's basis for depletion by total recoverable units. | Rate per unit. |
| 2 | Multiply the rate per unit by units sold during the tax year. | Cost depletion deduction. |

**Note.** You must keep accounts for the depletion of each property and adjust these accounts each year for units sold and depletion claimed.

**Elective safe harbor for owners of oil and gas property.** Owners of oil and gas property may use an elective safe harbor in determining the property's recoverable reserves for purposes of computing cost depletion. If this election is made, special rules apply. See Revenue Procedure 2004-19 on page 563 of Internal Revenue Bulletin 2004-10, available at *www.irs.gov/pub/irs-irbs/irb04-10.pdf*.

To make the election, attach a statement to your timely filed (including extensions) original return for the first tax year for which the safe harbor is elected. The statement must indicate that you are electing the safe harbor provided by Revenue Procedure 2004-19. The election, if made, is effective for the tax year in which it is made and all subsequent years. It cannot be revoked for the tax year in which it is elected, but may be revoked in a later year. Once revoked, it cannot be re-elected for the next 5 years.

## Percentage Depletion

To figure percentage depletion, you multiply a certain percentage, specified for each mineral, by your gross income from the property during the tax year.

The rates to be used and other conditions and qualifications for oil and gas wells are discussed later under *Independent Producers and Royalty Owners* and under *Natural Gas Wells.* Rates and other rules for percentage depletion of other specific minerals are found later in *Mines and Geothermal Deposits.*

**Gross income.** When figuring your percentage depletion, subtract from your gross income from the property the following amounts.

- Any rents or royalties you paid or incurred for the property.
- The part of any bonus you paid for a lease on the property allocable to the product sold (or that otherwise gives rise to gross income) for the tax year.

A bonus payment includes amounts you paid as a lessee to satisfy a production payment retained by the lessor.

Use the following fraction to figure the part of the bonus you must subtract.

$$\frac{\text{No. of units sold in the tax year}}{\text{Recoverable units from the property}} \times \text{Bonus Payments}$$

For oil and gas wells and geothermal deposits, gross income from the property is defined later under *Oil and Gas Wells*. For property other than a geothermal deposit or an oil and gas well, gross income from the property is defined later under *Mines and Geothermal Deposits*.

**Taxable income limit.** The percentage depletion deduction generally cannot be more than 50% (100% for oil and gas property) of your taxable income from the property figured without the depletion deduction and the deduction for domestic production activities under section 199 of the Internal Revenue Code.

Taxable income from the property means gross income from the property minus all allowable deductions (excluding any deduction for depletion or qualified domestic production activities) attributable to mining processes, including mining transportation. These deductible items include the following.

- Operating expenses.
- Certain selling expenses.
- Administrative and financial overhead.
- Depreciation.
- Intangible drilling and development costs.
- Exploration and development expenditures.

The following rules apply when figuring your taxable income from the property for purposes of the taxable income limit.

- Do not deduct any net operating loss deduction from the gross income from the property.
- Corporations do not deduct charitable contributions from the gross income from the property.
- If, during the year, you dispose of an item of section 1245 property that was used in connection with mineral property, reduce any allowable deduction for mining expenses by the part of any gain you must report as ordinary income that is allocable to the mineral property. See section 1.613-5(b)(1) of the regulations for information on how to figure the ordinary gain allocable to the property.

## Oil and Gas Wells

You cannot claim percentage depletion for an oil or gas well unless at least one of the following applies.

- You are either an independent producer or a royalty owner.
- The well produces natural gas that is either sold under a fixed contract or produced from geopressured brine.

If you are an independent producer or royalty owner, see *Independent Producers and Royalty Owners*, next.

For information on the depletion deduction for wells that produce natural gas that is either sold under a fixed contract or produced from geopressured brine, see *Natural Gas Wells,* later.

### Independent Producers and Royalty Owners

If you are an independent producer or royalty owner, you figure percentage depletion using a rate of 15% of the gross income from the property based on your average daily production of domestic crude oil or domestic natural gas up to your depletable oil or natural gas quantity. However, certain refiners, as explained next, and certain retailers and transferees of proven oil and gas properties, as explained later, cannot claim percentage depletion. For information on figuring the deduction, see *Figuring percentage depletion,* later.

**Refiners who cannot claim percentage depletion.** For tax years ending before August 9, 2005, you cannot claim percentage depletion if you or a related person refine crude oil and you and the related person refined more than 50,000 barrels on any day during the tax year. For tax years ending after August 8, 2005, this limit is increased to 75,000 barrels, based on average (rather than actual) daily refinery runs for the tax year. The average daily refinery run is computed by dividing total refinery runs for the tax year by the total number of days in the tax year.

***Related person.*** You and another person are related persons if either of you holds a significant ownership interest in the other person or if a third person holds a significant ownership interest in both of you.

For example, a corporation, partnership, estate, or trust and anyone who holds a significant ownership interest in it are related persons. A partnership and a trust are related persons if one person holds a significant ownership interest in each of them.

For purposes of the related person rules, significant ownership interest means direct or indirect ownership of 5% or more in any one of the following.

- The value of the outstanding stock of a corporation.
- The interest in the profits or capital of a partnership.
- The beneficial interests in an estate or trust.

Any interest owned by or for a corporation, partnership, trust, or estate is considered to be owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries.

**Retailers who cannot claim percentage depletion.** You cannot claim percentage depletion if both the following apply.

1. You sell oil or natural gas or their by-products directly or through a related person in any of the following situations.
   a. Through a retail outlet operated by you or a related person.
   b. To any person who is required under an agreement with you or a related person to use a trademark, trade name, or service mark or name owned by you or a related person in marketing or distributing oil, natural gas, or their by-products.
   c. To any person given authority under an agreement with you or a related person to occupy any retail outlet owned, leased, or controlled by you or a related person.
2. The combined gross receipts from sales (not counting resales) of oil, natural gas, or their by-products by all retail outlets taken into account in (1) are more than $5 million for the tax year.

For the purpose of determining if this rule applies, do not count the following.

- Bulk sales (sales in very large quantities) of oil or natural gas to commercial or industrial users.
- Bulk sales of aviation fuels to the Department of Defense.
- Sales of oil or natural gas or their by-products outside the United States if none of your domestic production or that of a related person is exported during the tax year or the prior tax year.

***Related person.*** To determine if you and another person are related persons, see *Related person* under *Refiners who cannot claim percentage depletion*, earlier.

***Sales through a related person.*** You are considered to be selling through a related person if any sale by the related person produces gross income from which you may benefit because of your direct or indirect ownership interest in the person.

You are ***not*** considered to be selling through a related person who is a retailer if all the following apply.

- You do not have a significant ownership interest in the retailer.

- You sell your production to persons who are not related to either you or the retailer.
- The retailer does not buy oil or natural gas from your customers or persons related to your customers.
- There are no arrangements for the retailer to acquire oil or natural gas you produced for resale or made available for purchase by the retailer.
- Neither you nor the retailer knows of or controls the final disposition of the oil or natural gas you sold or the original source of the petroleum products the retailer acquired for resale.

**Transferees who cannot claim percentage depletion.** You cannot claim percentage depletion if you received your interest in a proven oil or gas property by transfer after 1974 and before October 12, 1990. For a definition of the term "transfer," see section 1.613A-7(n) of the regulations. For a definition of the term "interest in proven oil or gas property," see section 1.613A-7(p) of the regulations.

**Figuring percentage depletion.** Generally, as an independent producer or royalty owner, you figure your percentage depletion by computing your average daily production of domestic oil or gas and comparing it to your depletable oil or gas quantity. If your average daily production does not exceed your depletable oil or gas quantity, you figure your percentage depletion by multiplying the gross income from the oil or gas property (defined later) by 15%. If your average daily production of domestic oil or gas exceeds your depletable oil or gas quantity, you must make an allocation as explained later under *Average daily production exceeds depletable quantities.*

In addition, there is a limit on the percentage depletion deduction. See *Taxable income limit,* later.

**Average daily production.** Figure your average daily production by dividing your total domestic production of oil or gas for the tax year by the number of days in your tax year.

***Partial interest.*** If you have a partial interest in the production from a property, figure your share of the production by multiplying total production from the property by your percentage of interest in the revenues from the property.

You have a partial interest in the production from a property if you have a net profits interest in the property. To figure the share of production for your net profits interest, you must first determine your percentage participation (as measured by the net profits) in the gross revenue from the property. To figure this percentage, you divide the income you receive for your net profits interest by the gross revenue from the property. Then multiply the total production from the property by your percentage participation to figure your share of the production.

***Example.*** John Oak owns oil property in which Paul Elm owns a 20% net profits interest. During the year, the property produced 10,000 barrels of oil, which John sold for $200,000. John had expenses of $90,000 attributable to the property. The property generated a net profit of $110,000 ($200,000 – $90,000). Paul received income of $22,000 ($110,000 × .20) for his net profits interest.

Paul determined his percentage participation to be 11% by dividing $22,000 (the income he received) by $200,000 (the gross revenue from the property). Paul determined his share of the oil production to be 1,100 barrels (10,000 barrels × 11%).

**Depletable oil or natural gas quantity.** Generally, your depletable oil quantity is 1,000 barrels. Your depletable natural gas quantity is 6,000 cubic feet multiplied by the number of barrels of your depletable oil quantity that you choose to apply. If you claim depletion on both oil and natural gas, you must reduce your depletable oil quantity (1,000 barrels) by the number of barrels you use to figure your depletable natural gas quantity.

***Example.*** You have both oil and natural gas production. To figure your depletable natural gas quantity, you choose to apply 360 barrels of your 1000-barrel depletable oil quantity. Your depletable natural gas quantity is 2.16 million cubic feet of gas (360 × 6000). You must reduce your depletable oil quantity to 640 barrels (1000 – 360).

If you have production from marginal wells, see section 613A(c)(6) of the Internal Revenue Code to figure your depletable oil or natural gas quantity.

***Business entities and family members.*** You must allocate the depletable oil or gas quantity among the following related persons in proportion to each entity's or family member's production of domestic oil or gas for the year.

- Corporations, trusts, and estates if 50% or more of the beneficial interest is owned by the same or related persons (considering only persons that own at least 5% of the beneficial interest).
- You and your spouse and minor children.

For purposes of this allocation, a related person is anyone mentioned under *Related persons* in chapter 12 except that item (1) in that discussion includes only an individual, his or her spouse, and minor children.

***Controlled group of corporations.*** Members of the same controlled group of corporations are treated as one taxpayer when figuring the depletable oil or natural gas quantity. They share the depletable quantity. Under this rule, a controlled group of corporations is defined in section 1563(a) of the Internal Revenue Code, except that the stock ownership requirement in that definition is "more than 50%" rather than "at least 80%."

**Gross income from the property.** For purposes of percentage depletion, gross income from the property (in the case of oil and gas wells) is the amount you receive from the sale of the oil or gas in the immediate vicinity of the well. If you do not sell the oil or gas on the property, but manufacture or convert it into a refined product before sale or transport it before sale, the gross income from the property is the representative market or field price (RMFP) of the oil or gas, before conversion or transportation.

If you sold gas after you removed it from the premises for a price that is lower than the RMFP, determine gross income from the property for percentage depletion purposes without regard to the RMFP.

Gross income from the property does not include lease bonuses, advance royalties, or other amounts payable without regard to production from the property.

**Average daily production exceeds depletable quantities.** If your average daily production for the year is more than your depletable oil or natural gas quantity, figure your allowance for depletion for each domestic oil or natural gas property as follows.

1. Figure your average daily production of oil or natural gas for the year.
2. Figure your depletable oil or natural gas quantity for the year.
3. Figure depletion for all oil or natural gas produced from the property using a percentage depletion rate of 15%.
4. Multiply the result figured in (3) by a fraction, the numerator of which is the result figured in (2) and the denominator of which is the result figured in (1). This is your depletion allowance for that property for the year.

**Taxable income limit.** If you are an independent producer or royalty owner of oil and gas, your deduction for percentage depletion is limited to the smaller of the following.

- 100% of your taxable income from the property figured without the deduction for depletion and the deduction for domestic production activities under section 199 of the Internal Revenue Code. For a definition of taxable income from the property, see *Taxable income limit*, earlier, under *Mineral Property.*
- 65% of your taxable income from all sources, figured without the depletion allowance, the deduction for domestic production activities, any net operating loss carryback, and any capital loss carryback.

You can carry over to the following year any amount you cannot deduct because of the 65%-of-taxable-income limit. Add it to your depletion allowance (before applying any limits) for the following year.

For 2005, depletion on the marginal production of oil or natural gas is not limited to your taxable income from the property figured without the depletion deduction. For information on marginal production, see section 613A(c)(6) of the Internal Revenue Code.

## Partnerships and S Corporations

Generally, each partner or shareholder, and not the partnership or S corporation, figures the depletion allowance separately. (However, see *Electing large partnerships must figure depletion allowance,* later.) Each partner or shareholder must decide whether to use cost or percentage depletion. If a partner or shareholder uses percentage depletion, he or she must apply the 65%-of-taxable-income limit using his or her taxable income from all sources.

**Partner's or shareholder's adjusted basis.** The partnership or S corporation must allocate to each partner or shareholder his or her share

of the adjusted basis of each oil or gas property held by the partnership or S corporation. The partnership or S corporation makes the allocation as of the date it acquires the oil or gas property.

Each partner's share of the adjusted basis of the oil or gas property generally is figured according to that partner's interest in partnership capital. However, in some cases, it is figured according to the partner's interest in partnership income.

The partnership or S corporation adjusts the partner's or shareholder's share of the adjusted basis of the oil and gas property for any capital expenditures made for the property and for any change in partnership or S corporation interests.


Each partner or shareholder must separately keep records of his or her share of the adjusted basis in each oil and gas property of the partnership or S corporation. The partner or shareholder must reduce his or her adjusted basis by the depletion allowed or allowable on the property each year. The partner or shareholder must use that reduced adjusted basis to figure cost depletion or his or her gain or loss if the partnership or S corporation disposes of the property.

**Reporting the deduction.** Information that you, as a partner or shareholder, use to figure your depletion deduction on oil and gas properties is reported by the partnership or S corporation on line 20 of Schedule K-1 (Form 1065) or on line 17 of Schedule K-1 (Form 1120S). Deduct oil and gas depletion for your partnership or S corporation interest on line 20 of Schedule E (Form 1040). The depletion deducted on Schedule E is included in figuring income or loss from rental real estate or royalty properties. The instructions for Schedule E explain where to report this income or loss and whether you need to file either of the following forms.

- Form 6198, At-Risk Limitations.
- Form 8582, Passive Activity Loss Limitations.

**Electing large partnerships must figure depletion allowance.** An electing large partnership, rather than each partner, generally must figure the depletion allowance. The partnership figures the depletion allowance without taking into account the 65-percent-of-taxable-income limit and the depletable oil or natural gas quantity. Also, the adjusted basis of a partner's interest in the partnership is not affected by the depletion allowance.

An electing large partnership is one that meets both the following requirements.

- The partnership had 100 or more partners in the preceding year.
- The partnership chooses to be an electing large partnership.

***Disqualified persons.*** An electing large partnership does not figure the depletion allowance of its partners that are disqualified persons. Disqualified persons must figure it themselves, as explained earlier.

All the following are disqualified persons.

- Refiners who cannot claim percentage depletion (discussed under *Independent Producers and Royalty Owners,* earlier).
- Retailers who cannot claim percentage depletion (discussed under *Independent Producers and Royalty Owners,* earlier).
- Any partner whose average daily production of domestic crude oil and natural gas is more than 500 barrels during the tax year in which the partnership tax year ends. Average daily production is discussed earlier.

## Natural Gas Wells

You can use percentage depletion for a well that produces natural gas either sold under a fixed contract or produced from geopressured brine.

**Natural gas sold under a fixed contract.** Natural gas sold under a fixed contract qualifies for a percentage depletion rate of 22%. This is domestic natural gas sold by the producer under a contract that does not provide for a price increase to reflect any increase in the seller's tax liability because of the repeal of percentage depletion for gas. The contract must have been in effect from February 1, 1975, until the date of sale of the gas. Price increases after February 1, 1975, are presumed to take the increase in tax liability into account unless demonstrated otherwise by clear and convincing evidence.

**Natural gas from geopressured brine.** Qualified natural gas from geopressured brine is eligible for a percentage depletion rate of 10%. This is natural gas that is both the following.

- Produced from a well you began to drill after September 1978 and before 1984.
- Determined in accordance with section 503 of the Natural Gas Policy Act of 1978 to be produced from geopressured brine.

# Mines and Geothermal Deposits

Certain mines, wells, and other natural deposits, including geothermal deposits, qualify for percentage depletion.

**Mines and other natural deposits.** For a natural deposit, the percentage of your gross income from the property that you can deduct as depletion depends on the type of deposit.

The following is a list of the percentage depletion rates for the more common minerals.

| DEPOSITS | RATE |
|---|---|
| Sulphur, uranium, and, if from deposits in the United States, asbestos, lead ore, zinc ore, nickel ore, and mica | 22% |
| Gold, silver, copper, iron ore, and certain oil shale, if from deposits in the United States | 15% |
| Borax, granite, limestone, marble, mollusk shells, potash, slate, soapstone, and carbon dioxide produced from a well | 14% |
| Coal, lignite, and sodium chloride | 10% |
| Clay and shale used or sold for use in making sewer pipe or bricks or used or sold for use as sintered or burned lightweight aggregates | 7½% |
| Clay used or sold for use in making drainage and roofing tile, flower pots, and kindred products, and gravel, sand, and stone (other than stone used or sold for use by a mine owner or operator as dimension or ornamental stone) | 5% |

You can find a complete list of minerals and their percentage depletion rates in section 613(b) of the Internal Revenue Code.

***Corporate deduction for iron ore and coal.*** The percentage depletion deduction of a corporation for iron ore and coal (including lignite) is reduced by 20% of:

- The percentage depletion deduction for the tax year (figured without regard to this reduction), minus
- The adjusted basis of the property at the close of the tax year (figured without the depletion deduction for the tax year).

**Gross income from the property.** For property other than a geothermal deposit or an oil or gas well, gross income from the property means the gross income from mining. Mining includes all the following.

- Extracting ores or minerals from the ground.
- Applying certain treatment processes.
- Transporting ores or minerals (generally, not more than 50 miles) from the point of extraction to the plants or mills in which the treatment processes are applied.

***Excise tax.*** Gross income from mining includes the separately stated excise tax received by a mine operator from the sale of coal to compensate the operator for the excise tax the mine operator must pay to finance black lung benefits.

***Extraction.*** Extracting ores or minerals from the ground includes extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining. This does not apply to extraction from waste or residue of prior mining by the purchaser of the waste or residue or the purchaser of the rights to extract ores or minerals from the waste or residue.

***Treatment processes.*** The processes included as mining depend on the ore or mineral mined. To qualify as mining, the treatment processes must be applied by the mine owner or operator. For a listing of treatment processes considered as mining, see section 613(c)(4) of the Internal Revenue Code and the related regulations.

***Transportation of more than 50 miles.*** If the IRS finds that the ore or mineral must be transported more than 50 miles to plants or mills to be treated because of physical and other requirements, the additional authorized trans-

portation is considered mining and included in the computation of gross income from mining.

If you wish to include transportation of more than 50 miles in the computation of gross income from mining, file an application in duplicate with the IRS. Include on the application the facts concerning the physical and other requirements which prevented the construction and operation of the plant within 50 miles of the point of extraction. Send this application to:

Internal Revenue Service
Associate Chief Counsel
Passthroughs and Special Industries
CC:PSI:FO
1111 Constitution Ave., N.W., IR-5300
Washington, DC 20224

**Disposal of coal or iron ore.** You cannot take a depletion deduction for coal (including lignite) or iron ore mined in the United States if both the following apply.

- You disposed of it after holding it for more than 1 year.
- You disposed of it under a contract under which you retain an economic interest in the coal or iron ore.

Treat any gain on the disposition as a capital gain.

***Disposal to related person.*** This rule does not apply if you dispose of the coal or iron ore to one of the following persons.

- A related person (as listed in chapter 12).
- A person owned or controlled by the same interests that own or control you.

**Geothermal deposits.** Geothermal deposits located in the United States or its possessions qualify for a percentage depletion rate of 15%. A geothermal deposit is a geothermal reservoir of natural heat stored in rocks or in a watery liquid or vapor. For percentage depletion purposes, a geothermal deposit is not considered a gas well.

Figure gross income from the property for a geothermal steam well in the same way as for oil and gas wells. See *Gross income from the property,* earlier, under *Oil and Gas Wells.* Percentage depletion on a geothermal deposit cannot be more than 50% of your taxable income from the property.

## Lessor's Gross Income

A lessor's gross income from the property that qualifies for percentage depletion usually is the total of the royalties received from the lease. However, for oil, gas, or geothermal property, gross income does not include lease bonuses, advanced royalties, or other amounts payable without regard to production from the property.

**Bonuses and advanced royalties.** Bonuses and advanced royalties are payments a lessee makes before production to a lessor for the grant of rights in a lease or for minerals, gas, or oil to be extracted from leased property. If you are the lessor, your income from bonuses and advanced royalties received is subject to an allowance for depletion.

***Figuring cost depletion.*** To figure cost depletion on a bonus, multiply your adjusted basis in the property by a fraction, the numerator of which is the bonus and the denominator of which is the total bonus and royalties expected to be received. To figure cost depletion on advanced royalties, use the computation explained earlier under *Cost Depletion,* treating the number of units for which the advanced royalty is received as the number of units sold.

***Figuring percentage depletion.*** In the case of mines, wells, and other natural deposits other than gas, oil, or geothermal property, you may use the percentage rates discussed earlier under *Mines and Geothermal Deposits.* Any bonus or advanced royalty payments are generally part of the gross income from the property to which the rates are applied in making the calculation. However, in the case of independent producers and royalty owners of oil and gas property, bonuses and advance royalty payments are not a part of gross income.

***Terminating the lease.*** If you receive a bonus on a lease that expires, terminates, or is abandoned before you derive any income from the extraction of mineral, include in income for the year of expiration, termination, or abandonment, the depletion deduction you took. Also increase your adjusted basis in the property to restore the depletion deduction you previously subtracted.

For advanced royalties, include in income for the year of lease termination, the depletion claimed on minerals for which the advanced royalties were paid if the minerals were not produced before termination. Increase your adjusted basis in the property by the amount you include in income.

**Delay rentals.** These are payments for deferring development of the property. Since delay rentals are ordinary rent, they are ordinary income that is not subject to depletion. These rentals can be avoided by either abandoning the lease, beginning development operations, or obtaining production.

# Timber

You can figure timber depletion only by the cost method. Percentage depletion does not apply to timber. Base your depletion on your cost or other basis in the timber. Your cost does not include the cost of land or any amounts recoverable through depreciation.

Depletion takes place when you cut standing timber. You can figure your depletion deduction when the quantity of cut timber is first accurately measured in the process of exploitation.

**Figuring cost depletion.** To figure your cost depletion allowance, you multiply the number of timber units cut by your depletion unit.

***Timber units.*** When you acquire timber property, you must make an estimate of the quantity of marketable timber that exists on the property. You measure the timber using board feet, log scale, cords, or other units. If you later determine that you have more or less units of timber, you must adjust the original estimate.

The term "timber property" means your economic interest in standing timber in each tract or block representing a separate timber account.

***Depletion unit.*** You figure your depletion unit each year by taking the following steps.

1. Determine your cost or adjusted basis of the timber on hand at the beginning of the year. Adjusted basis is defined under *Cost Depletion* in the discussion on *Mineral Property.*
2. Add to the amount determined in (1) the cost of any timber units acquired during the year and any additions to capital.
3. Figure the number of timber units to take into account by adding the number of timber units acquired during the year to the number of timber units on hand in the account at the beginning of the year and then adding (or subtracting) any correction to the estimate of the number of timber units remaining in the account.
4. Divide the result of (2) by the result of (3). This is your depletion unit.

***Example.*** You bought a timber tract for $160,000 and the land was worth as much as the timber. Your basis for the timber is $80,000. Based on an estimated one million board feet (1,000 MBF) of standing timber, you figure your depletion unit to be $80 per MBF ($80,000 ÷ 1,000). If you cut 500 MBF of timber, your depletion allowance would be $40,000 (500 MBF × $80).

**When to claim depletion.** Claim your depletion allowance as a deduction in the year of sale or other disposition of the products cut from the timber, unless you choose to treat the cutting of timber as a sale or exchange (explained below). Include allowable depletion for timber products not sold during the tax year the timber is cut as a cost item in the closing inventory of timber products for the year. The inventory is your basis for determining gain or loss in the tax year you sell the timber products.

***Example.*** Assume the same facts as in the previous example except that you sold only half of the timber products in the cutting year. You would deduct $20,000 of the $40,000 depletion that year. You would add the remaining $20,000 depletion to your closing inventory of timber products.

**Electing to treat the cutting of timber as a sale or exchange.** You can elect, under certain circumstances, to treat the cutting of timber held for more than 1 year as a sale or exchange. You must make the election on your income tax return for the tax year to which it applies. If you make this election, subtract the adjusted basis for depletion from the fair market value of the timber on the first day of the tax year in which you cut it to figure the gain or loss on the cutting. You generally report the gain as long-term capital gain. The fair market value then becomes your basis for figuring your ordinary gain or loss on the sale or other disposition of the products cut from the timber. For more information, see *Timber* in chapter 2 of Publication 544, Sales and Other Dispositions of Assets.

You may revoke an election to treat the cutting of timber as a sale or exchange without IRS's consent. The prior election (and revocation) is disregarded for purposes of making a subsequent election. See Form T (Timber), Forest Activities Schedule, for more information.

**Form T.** Complete and attach Form T (Timber) to your income tax return if you claim a deduction for timber depletion, choose to treat the cutting of timber as a sale or exchange, or make an outright sale of timber.

# 11.

# Business Bad Debts

## Introduction

If someone owes you money you cannot collect, you have a bad debt. There are two kinds of bad debts—business and nonbusiness. This chapter covers business bad debts.

Generally, a business bad debt is one that comes from operating your trade or business. You can deduct business bad debts on your business tax return.

All other bad debts are nonbusiness bad debts and are deductible only as short-term capital losses on Schedule D (Form 1040). For more information on nonbusiness bad debts, see Publication 550.

### Topics

This chapter discusses:

- Definition of business bad debt
- When a debt becomes worthless
- How to treat business bad debts
- Recovery of a business bad debt
- Where to deduct business bad debts

### Useful Items

You may want to see:

**Publication**

- ❑ **525** Taxable and Nontaxable Income
- ❑ **536** Net Operating Losses (NOLs) for Individuals, Estates, and Trusts
- ❑ **544** Sales and Other Dispositions of Assets
- ❑ **550** Investment Income and Expenses
- ❑ **556** Examination of Returns, Appeal Rights, and Claims for Refund

See chapter 14 for information about getting publications and forms.

## Business Bad Debt Defined

A business bad debt is a loss from the worthlessness of a debt that was either:

- Created or acquired in your trade or business, or
- Closely related to your trade or business when it became partly or totally worthless.

A debt is closely related to your trade or business if your primary motive for incurring the debt is business related.

The bad debts of a corporation are always business bad debts.

**Credit sales.** Business bad debts are mainly the result of credit sales to customers. Goods and services customers have not paid for are recorded in your books as either accounts receivable or notes receivable. If you are unable to collect any part of these receivables, the uncollectible part is a business bad debt.

Accounts or notes receivable valued at fair market value when received are deductible only at that value, even though the fair market value may be less than face value. If you bought an account receivable for less than its face value, the amount you can deduct if it becomes worthless is the amount you paid for it.


*You can take a bad debt deduction only if the amount owed you was previously included in gross income. This applies to amounts owed you from all sources of taxable income, including sales, services, rents, and interest.*

***Accrual method.*** If you use an accrual method of accounting, you generally report income as you earn it. You can only take a bad debt deduction for an uncollectible receivable if you have previously included the uncollectible amount in income.

If you qualify, you can use the nonaccrual-experience method of accounting discussed later. Under this method, you do not have to accrue income that, based on your experience, you do not expect to collect.

***Cash method.*** If you use the cash method of accounting, you generally report income when you receive payment. You cannot take a bad debt deduction for amounts owed to you because you never included those amounts in income. For example, a cash basis architect cannot take a bad debt deduction if a client does not pay the bill because the architect's fee was not previously included in income.

**Debts from a former business.** If you sell your business but keep its receivables, these debts are business debts since they arose out of your trade or business. If one of these debts later becomes worthless, the loss is still a business bad debt. These debts would also be business debts if sold to the new owner of the business.

If you sell your business to one person and sell your receivables to someone else, the activities of the new holder of the debts determine whether they are business or nonbusiness debts for that person. A loss from the debts is a business bad debt to the new holder if that person acquired the debts in his or her trade or business or if the debts were closely related to the new holder's trade or business when they became worthless. Otherwise, a loss from these debts is a nonbusiness bad debt.

***Debt acquired from a decedent.*** The character of a loss from debts of a business acquired from a decedent is determined in the same way as debts sold by a business. If you are in a trade or business, a loss from the debts is a business bad debt if the debts were closely related to your trade or business when they became worthless. Otherwise, a loss from these debts is a nonbusiness bad debt.

***Example 1.*** In 2004, Arnie died leaving his business, including the accounts receivable, to his son Carl. Certain receivables become worthless in 2005. Carl can deduct the loss as a business bad debt because the debt was closely related to his business when it became worthless.

***Example 2.*** In 2004, Charlie died leaving his business to his son George, but leaving the receivables to his daughter Diane. The receivables become worthless in 2005. Diane is not engaged in any trade or business during 2004 or 2005. Therefore, Diane's loss is a nonbusiness bad debt even though the original debt was incurred in a business.

***Liquidation.*** If you liquidate your business and some of your accounts receivable become worthless, they are business bad debts.

## Types of Business Bad Debts

The following are situations that may result in a business bad debt.

**Loans to clients and suppliers.** If you make a loan to a client, supplier, employee, or distributor for a business reason and it becomes worthless, you have a business bad debt.

***Example.*** John Smith, an advertising agent, made loans to certain clients to keep their business. One of these clients went bankrupt and could not repay him. Since the main reason for making the loan was business related, the debt was a business debt and John can take a business bad debt deduction.

**Debts of political parties.** If a political party (or other organization that accepts contributions or spends money to influence elections) owes you money and the debt becomes worthless, you can take a bad debt deduction only if you use an accrual method of accounting and meet all the following tests.

1. The debt arose from the sale of goods or services in the ordinary course of your trade or business.
2. More than 30% of your receivables accrued in the year of the sale were from sales to political parties.
3. You made substantial continuing efforts to collect on the debt.

**Loan or capital contribution.** You cannot take a bad debt deduction for a loan you made to a corporation if, based on the facts and circumstances, the loan is actually a contribution to capital.

**Debts of an insolvent partner.** If your business partnership breaks up and one of your former partners is insolvent and cannot pay any of the partnership's debts, you may have to pay more than your share. If you pay any part of the insolvent partner's share of the debts, you can

take a bad debt deduction for the amount you pay.

**Business loan guarantee.** If you guarantee a debt that becomes worthless, the debt can qualify as a business bad debt if all the following requirements are met.

- You made the guarantee in the course of your trade or business.
- You have a legal duty to pay the debt.
- You made the guarantee before the debt became worthless. You meet this requirement if you reasonably expected you would not have to pay the debt without full reimbursement from the issuer.
- You receive reasonable consideration for making the guarantee. You meet this requirement if you made the guarantee in accord with normal business practice or for a good faith business purpose.

***Example.*** Jane Zayne owns the Zayne Dress Company. She guaranteed payment of a $20,000 note for Elegant Fashions, a dress outlet. Elegant Fashions is one of Zayne's largest clients. Elegant Fashions later filed for bankruptcy and defaulted on the loan. Ms. Zayne made full payment to the bank. She can take a business bad debt deduction, since her guarantee was made in the course of her trade or business for a good faith business purpose. She was motivated by the desire to retain one of her better clients and keep a sales outlet.

***Employee.*** Any guarantee you make to protect or improve your job is closely related to your trade or business as an employee.

***Deductible in the year paid.*** If you make a payment on a loan you guaranteed, you can deduct it in the year paid, unless you have rights against the borrower.

***Rights against a borrower.*** When you make payment on a loan you guaranteed, you may have the right to take the place of the lender. The debt is then owed to you. If you have this right, or some other right to demand payment from the borrower, you cannot take a bad debt deduction until these rights become partly or totally worthless.

**Joint debtor.** If two or more debtors jointly owe you money, your inability to collect from one does not enable you to deduct a proportionate amount as a bad debt.

**Bankruptcy claim.** If a person who owes you money becomes bankrupt, the amount you can deduct as a bad debt is the amount owed to you minus the amount you receive from distribution of the bankrupt person's assets.

**Sale of mortgaged property.** If mortgaged or pledged property is sold for less than the debt, the unpaid, uncollectible balance of the debt is a bad debt.

# When Debt Is Worthless

You do not have to wait until a debt is due to determine whether it is worthless. A debt becomes worthless when there is no longer any chance the amount owed will be paid.

It is not necessary to go to court if you can show that a judgment from the court would be uncollectible. You must only show that you have taken reasonable steps to collect the debt. Bankruptcy of your debtor is generally good evidence of the worthlessness of at least a part of an unsecured and unpreferred debt.

**Property received for debt.** If you receive property in partial settlement of a debt, reduce the debt by the fair market value of the property received. You can deduct the remaining debt as a bad debt if and when it becomes worthless.

If you later sell the property, any gain on the sale is due to the appreciation of the property. It is not a recovery of a bad debt. For information on the sale of an asset, see Publication 544.

***Example.*** Patti owed Margaret $5,000. In partial satisfaction of the debt, Patti gave Margaret property worth $2,000. Margaret deducted the remaining $3,000 as a bad debt but did not get a tax benefit from the deduction as she had no taxable income. Margaret later sold the property for a $1,000 gain. Even though Margaret did not get a tax benefit from the earlier bad debt deduction, she must include the $1,000 gain in her income. It is not a recovery of her bad debt.

# How To Treat

There are two ways to treat business bad debts.

- The specific charge-off method.
- The nonaccrual-experience method.

Generally, you must use the specific charge-off method. However, you can use the nonaccrual-experience method if you meet the requirements discussed later under *Nonaccrual-Experience Method*.

## Specific Charge-Off Method

If you use the specific charge-off method, you can deduct specific business bad debts that become either partly or totally worthless during the tax year.

**Partly worthless debts.** You can deduct specific bad debts that become partly uncollectible. Your tax deduction is limited to the amount you charge off on your books during the year. You do not have to charge off and deduct your partly worthless debts annually. You can delay the charge off until a later year. You cannot, however, deduct any part of a debt after the year it becomes totally worthless.

***Significantly modified debt.*** An exception to the charge-off rule exists for debt which has been significantly modified and on which the holder recognized gain. For more information, see Regulations section 1.166-(3)(a)(3).

***Deduction disallowed.*** You can generally take a partial bad debt deduction only in the year you make the charge-off on your books. If, under audit, the IRS does not allow your deduction and the debt becomes partly worthless in a later tax year, you can deduct the amount you charge off in that year plus the disallowed amount charged-off in the earlier year. The charge off in the earlier year, unless reversed on your books, fulfills the charge-off requirement for the later year.

**Totally worthless debts.** If a debt becomes totally worthless, you can deduct the entire amount, except any amount deducted in an earlier tax year when the debt was only partly worthless.

You do not have to make an actual charge-off on your books to claim a bad debt deduction for a totally worthless debt. However, you may want to do so. If you do not and the IRS later rules the debt is only partly worthless, you will not be allowed a deduction for the debt in that tax year. A deduction of a partly worthless bad debt is limited to the amount actually charged off.

**Filing a claim for refund.** If you did not deduct a bad debt on your original return for the year it became worthless, you can file a claim for a credit or refund. If the bad debt was totally worthless, you must file the claim by the later of the following dates.

- 7 years from the date your original return was due (not including extensions).
- 2 years from the date you paid the tax.

If the claim is for a partly worthless bad debt, you must file the claim by the later of the following dates.

- 3 years from the date you filed your original return.
- 2 years from the date you paid the tax.

You may have longer to file the claim if you were physically or mentally unable to handle your financial affairs for a time. For details and more information about filing a claim, see Publication 556.

Use one of the following forms to file a claim.

Table 11-1. **Forms Used To File a Claim**

| IF you filed as a... | THEN file... |
|---|---|
| Sole proprietor or farmer | Form 1040X |
| Corporation | Form 1120X |
| S corporation | Form 1120S (check box F(5)) |
| Partnership | Form 1065 (check box G(5)) |

## Nonaccrual-Experience Method

If you use an accrual method of accounting and qualify under the rules explained in this section, you can use the nonaccrual-experience method for bad debts. Under this method, you do not accrue service related income you expect to be uncollectible.

You generally can use the nonaccrual-experience method for accounts receivable for services you performed only if:

- The services are provided in the fields of accounting, actuarial science, architecture, consulting, engineering, health, law, or the performing arts, or

- You meet the $5 million annual gross receipts test for all prior years.

**Service related income.** You can use the nonaccrual-experience method only for amounts earned by performing services. You cannot use this method for amounts owed to you from activities such as lending money, selling goods, or acquiring receivables or other rights to receive payment.

**Gross receipts test.** You meet the gross receipts test if your average annual gross receipts for the 3 prior tax years does not exceed $5,000,000.

**Interest or penalty charged.** Generally, you cannot use the nonaccrual-experience method for amounts due on which you charge interest or a late payment penalty. However, do not treat a discount offered for early payment as the charging of interest or a penalty if both the following apply.

- You otherwise accrue the full amount due as gross income at the time you provide the services.
- You treat the discount allowed for early payment as an adjustment to gross income in the year of payment.

**Methods available.** You can use any of the following nonaccrual-experience methods.

- 6-year moving average method.
- Actual experience method.
- Modified Black Motor method.
- Modified 6-year moving average method.
- Alternative nonaccrual-experience method.

Apply the nonaccrual-experience method separately to each account receivable.

You generally cannot change from one method to another without IRS approval. You may be able to obtain automatic consent to change your method of accounting. See section 1.448-2T(g) of the regulations for more information on obtaining consent to change to a nonaccrual-experience method or to change from one method to another.

For more information about the nonaccrual-experience method, including the $5 million gross receipts test, see section 448(d)(5) of the Internal Revenue Code and section 1.448-2T of the regulations.

## Recovery

If you deduct a bad debt on your tax return and later recover (collect) all or part of it, you may have to include all or part of the recovery in gross income. The amount you include is limited to the amount you actually deducted. However, you can exclude the amount deducted that did not reduce your tax. Report the recovery as "Other income" on the appropriate business form or schedule.

See *Recoveries* in Publication 525 for more information.

***Net operating loss (NOL) carryover.*** If a bad debt deduction increases an NOL carryover that has not expired before the beginning of the tax year in which the recovery takes place, you treat the deduction as having reduced your tax. A bad debt deduction that contributes to a net operating loss helps lower taxes in the year to which you carry the net operating loss.

***More information.*** See Publication 536 for more information about net operating losses.

## Where To Deduct

Use the following table to find where to deduct your business bad debts.

Table 11-2. **Where To Deduct a Bad Debt**

| IF you file as a... | THEN deduct your bad debt on... |
|---|---|
| Sole proprietor | Line 27 of Schedule C (Form 1040) |
| Farmer | Line 34 of Schedule F (Form 1040) |
| Corporation | Line 15 of Form 1120 or Form 1120-A |
| S corporation | Line 10 of Form 1120S |
| Partnership | Line 12 of Form 1065 |

# 12.

# Electric and Clean-Fuel Vehicles

## What's New

**Clean-fuel vehicle and refueling property deduction.** The clean-fuel vehicle and refueling property deduction will expire for vehicles placed in service after December 31, 2005.

**Alternative motor vehicle credit.** The Energy Policy Act of 2005 added a new credit for alternative motor vehicles placed in service after 2005. For details, see Form 8910, Alternative Motor Vehicle Credit.

## Reminder

**Maximum qualified electric vehicle credit.** The maximum qualified electric vehicle credit will be 25% of the otherwise allowable amount in 2006.

## Introduction

You are allowed a limited deduction for the cost of clean-fuel vehicle property and clean-fuel vehicle refueling property you place in service during the tax year. Also, you are allowed a tax credit of 10% of the cost of any qualified electric vehicle you place in service during the tax year.

TIP *You can take the electric vehicle credit or the deduction for clean-fuel vehicle property regardless of whether you use the vehicle in a trade or business. However, you can take a deduction for clean-fuel vehicle refueling property only if you use the property in your trade or business.*

### Topics

This chapter discusses:

- The deduction for clean-fuel vehicle property
- The deduction for clean-fuel vehicle refueling property
- Recapture of the deductions
- The electric vehicle credit
- Recapture of the credit

### Useful Items

You may want to see:

**Publication**

- ❑ **463** Travel, Entertainment, Gift, and Car Expenses
- ❑ **544** Sales and Other Dispositions of Assets
- ❑ **946** How To Depreciate Property

**Form (and Instructions)**

- ❑ **8834** Qualified Electric Vehicle Credit
- ❑ **8910** Alternative Motor Vehicle Credit

See chapter 14 for information about getting publications and forms.

## Definitions

The following definitions apply throughout this chapter.

**Clean-burning fuels.** The following are clean-burning fuels.

1. Natural gas.
2. Liquefied natural gas.
3. Liquefied petroleum gas.
4. Hydrogen.
5. Electricity.
6. Any other fuel that is at least 85% alcohol (any kind) or ether.

**Motor vehicle.** A motor vehicle is any vehicle that has four or more wheels and is manufactured primarily for use on public streets, roads, and highways. It does not include a vehicle operated exclusively on a rail or rails.

**Nonqualifying property.** This is property used in the following ways.

1. Predominantly outside the United States.
2. Predominantly to furnish lodging or in connection with the furnishing of lodging.
3. By certain tax-exempt organizations.
4. By governmental units or foreign persons or entities.

# Deductions for Clean-Fuel Vehicle and Refueling Property

You are allowed a limited deduction for the cost of clean-fuel vehicle property and clean-fuel vehicle refueling property. These deductions are allowed only in the tax year you place the property in service.

You cannot claim these deductions for the part of the property's cost you claim as a section 179 deduction. For information on the section 179 deduction, see Publication 946.

## Deduction for Clean-Fuel Vehicle Property

The deduction for this property may be claimed regardless of whether the property is used in a trade or business.

**Clean-fuel vehicle property.** Clean-fuel vehicle property is either of the following kinds of property.

1. A motor vehicle (defined earlier) produced by an original equipment manufacturer and designed to be propelled by a clean-burning fuel. These include designated hybrid gas-electric automobiles which, at this time, only include the Ford Escape Hybrid, Honda Accord Hybrid, Honda Insight, Honda Civic Hybrid, Lexus RX 400h, Mercury Mariner Hybrid, Toyota Highlander Hybrid, and Toyota Prius. Those designated automobiles do not qualify for the electric vehicle credit. For other than those designated automobiles, the only part of a vehicle's basis that qualifies for the deduction is the part attributable to:
   a. A clean-fuel engine that can use a clean-burning fuel,
   b. The property used to store or deliver the fuel to the engine, or
   c. The property used to exhaust gases from the combustion of the fuel.
2. Any property installed on a motor vehicle (including installation costs) to enable it to be propelled by a clean-burning fuel if:
   a. The property is an engine (or modification of an engine) that can use a clean-burning fuel, or
   b. The property is used to store or deliver that fuel to the engine or to exhaust gases from the combustion of that fuel.

For vehicles that may be propelled by both a clean-burning fuel and any other fuel, your deduction is generally the additional cost of permitting the use of the clean-burning fuel.

CAUTION *Clean-fuel vehicle property does not include an electric vehicle that qualifies for the electric vehicle credit, discussed later.*

**Qualified property.** Your property must meet the following requirements to qualify for the deduction.

1. It must be acquired for your own use and not for resale.
2. Its original use must begin with you.
3. Either—
   a. The motor vehicle of which it is a part must satisfy any federal or state emissions standards that apply to each fuel by which the vehicle is designed to be propelled, or
   b. It must satisfy any federal and state emissions certification, testing, and warranty requirements that apply.
4. It cannot be nonqualifying property, defined earlier.

**Deduction limit.** The maximum deduction you can claim for qualified clean-fuel vehicle property with respect to any motor vehicle is one of the following.

1. $50,000 for a truck or van with a gross vehicle weight rating over 26,000 pounds or for a bus with a seating capacity of at least 20 adults (excluding the driver).
2. $5,000 for a truck or van with a gross vehicle weight rating over 10,000 pounds but not more than 26,000 pounds.
3. $2,000 for a vehicle not included in (1) or (2).

## Deduction for Clean-Fuel Vehicle Refueling Property

Your property must meet the following requirements to qualify for this deduction.

1. It must be depreciable property.
2. Its original use must begin with you.
3. It cannot be nonqualifying property, defined earlier.

**Clean-fuel vehicle refueling property.** Clean-fuel vehicle refueling property is any property (other than a building or its structural components) used to do either of the following.

1. Store or dispense a clean-burning fuel (defined earlier) into the fuel tank of a motor vehicle propelled by the fuel, but only if the storage or dispensing is at the point where the fuel is delivered into the tank.
2. Recharge motor vehicles propelled by electricity, but only if the property is located at the point where the vehicles are recharged.

***Recharging property.*** This property includes any equipment used to provide electricity to the battery of a motor vehicle propelled by electricity. It includes low-voltage recharging equipment, high-voltage (quick) charging equipment, and ancillary connection equipment such as inductive charging equipment. It does not include property used to generate electricity, such as solar panels or windmills, and does not include the battery used in the vehicle.

**Deduction limit.** The maximum deduction you can claim for clean-fuel vehicle refueling property placed in service at one location is $100,000. To figure your maximum deduction for any tax year, subtract from $100,000 the total you (or any related person or predecessor) claimed for clean-fuel vehicle refueling property placed in service at that location for all earlier years.

CAUTION *If the deduction limit applies, you must specify on your tax return the property (and the portion of the property's cost) you are using as a basis for the deduction.*

***Related persons.*** For this purpose, the following are considered related persons.

1. An individual and his or her brothers and sisters, half-brothers, half-sisters, spouse, ancestors (parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.).
2. An individual and a corporation if the individual owns, directly or indirectly, more than 50% in value of the outstanding stock of the corporation.
3. Two corporations that are members of the same controlled group as defined in section 267(f) of the Internal Revenue Code.
4. A grantor and a fiduciary of any trust.
5. Fiduciaries of two separate trusts if the same person is a grantor of both trusts.
6. A fiduciary and a beneficiary of the same trust.
7. A fiduciary and a beneficiary of two separate trusts if the same person is a grantor of both trusts.
8. A fiduciary of a trust and a corporation if the trust or a grantor of the trust owns, directly or indirectly, more than 50% in value of the outstanding stock of the corporation.
9. A person and a tax-exempt educational or charitable organization that is controlled directly or indirectly by that person or by members of the family of that person.
10. A corporation and a partnership if the same persons own more than 50% in value of the outstanding stock of the corporation and more than 50% of the capital or profits interest in the partnership.
11. Two S corporations or an S corporation and a regular corporation if the same persons own more than 50% in value of the outstanding stock of each corporation.
12. A partnership and a person if the person, directly or indirectly owns, more than 50% of the capital or profits interests in the partnership.

13. Two partnerships if the same persons own, directly or indirectly, more than 50% of the capital or profits interest in both partnerships.
14. An executor of an estate and a beneficiary of the estate unless the sale or exchange is in satisfaction of a pecuniary bequest.

To determine whether an individual directly or indirectly owns any of the outstanding stock of a corporation, see *Ownership of stock* under *Related Persons* in Publication 538.

## How To Claim the Deductions

How you claim the deductions for clean-fuel vehicle property and clean-fuel vehicle refueling property depends on the use of the property and the kind of income tax return you file.

**Deduction for nonbusiness clean-fuel vehicle property by individuals.** Individuals can claim the deduction for clean-fuel vehicle property used for nonbusiness purposes by including the deduction in the total on line 36 of Form 1040. Also, enter the amount of your deduction and "Clean Fuel" on the dotted line next to line 36. If you use the vehicle partly for business, see the next two discussions.

**Deduction for business clean-fuel vehicle property by employees.** Employees who use clean-fuel vehicle property for business, or partly for business and partly for nonbusiness purposes, should include the entire deduction in the total on line 36 of Form 1040. Also, enter the amount of your deduction and "Clean Fuel" on the dotted line next to line 36.

**Sole proprietors.** Sole proprietors must claim deductions for clean-fuel vehicle property and clean-fuel vehicle refueling property used for business on the *Other expenses* line of either Schedule C (Form 1040) or Schedule F (Form 1040). If clean-fuel vehicle property is used partly for nonbusiness purposes, claim the nonbusiness part of the deduction as explained earlier under *Deduction for nonbusiness clean-fuel vehicle property by individuals.*

**Partnerships.** Partnerships claim the deductions for clean-fuel vehicle property and clean-fuel vehicle refueling property on line 20 of Form 1065.

**S corporations.** S corporations claim the deductions for clean-fuel vehicle property and clean-fuel vehicle refueling property on line 19 of Form 1120S.

**C corporations.** C corporations claim the deductions for clean-fuel vehicle property and clean-fuel vehicle refueling property on line 26 of Form 1120 (line 22 of Form 1120-A).

## Recapture of the Deductions

If the property ceases to qualify, you may have to recapture the deduction. You recapture the deduction by including it, or part of it, in your income.

### Clean-Fuel Vehicle Property

You must recapture the deduction for clean-fuel vehicle property if the property ceases to qualify within 3 years after the date you placed it in service. The property will cease to qualify if it is changed in any of the following ways.

1. It is modified so that it can no longer be propelled by a clean-burning fuel.
2. It ceases to be a qualified clean-fuel vehicle property (for example, by failing to meet emissions standards).
3. It becomes nonqualifying property, defined earlier.

**Sales or other dispositions.** If you sell or otherwise dispose of the vehicle within 3 years after the date you placed it in service and know or have reason to know that it will be changed in any of the ways described above, you are subject to the recapture rules. In other dispositions (including a disposition by reason of an accident or other casualty), the recapture rules do not apply.

If the vehicle was subject to depreciation, the deduction (minus any recapture) is considered depreciation when figuring the part of any gain from the disposition that is ordinary income. See Publication 544 for more information on dispositions of depreciable property.

**Recapture amount.** Figure your recapture amount by multiplying the deduction by the following percentage.

- 100% if the recapture date is within the first full year after the date the vehicle was placed in service.
- 66 2/3% if the recapture date is within the second full year after the date the vehicle was placed in service.
- 33 1/3% if the recapture date is within the third full year after the date the vehicle was placed in service.

***Recapture date.*** The recapture date is generally the date of the event that causes the recapture. However, the recapture date for an event described in item (3), earlier, is the first day of the recapture year in which the event occurs.

**How to report.** How you report the recapture amount for clean-fuel vehicle property as income depends on how you claimed the deduction for that property.

***Deducted by individuals as nonbusiness-use property.*** Include the amount on line 21 of Form 1040.

***Deducted by employees as business-use property.*** Include the amount on line 21 of Form 1040.

***Deducted by sole proprietors as business-use property.*** Include the amount on the *Other income* line of either Schedule C (Form 1040) or Schedule F (Form 1040).

***Partnerships and corporations (including S corporations).*** Include the amount on the *Other income* line of the form you file.

### Clean-Fuel Vehicle Refueling Property

You must recapture the deduction for clean-fuel vehicle refueling property if the property ceases to qualify at any time before the end of its depreciation recovery period. The property will cease to qualify if it is changed in any of the following ways.

1. It ceases to be a clean-fuel vehicle refueling property (for example, by being converted to store and dispense gasoline).
2. It is no longer used 50% or more in your trade or business.
3. It becomes nonqualifying property, defined earlier.

**Sales or other dispositions.** If you sell or otherwise dispose of the property before the end of its recovery period and know or have reason to know that it will be changed in any of the ways described above, you are subject to the recapture rules. In other dispositions (including a disposition by reason of an accident or other casualty), the recapture rules do not apply.

The deduction (minus any recapture amount) is considered depreciation when figuring the part of any gain from the disposition that is ordinary income. See Publication 544 for more information on dispositions of depreciable property.

**Recapture amount.** Figure your recapture amount by multiplying the deduction you claimed by the following fraction.

| | | |
|---|---|---|
| Total recovery period for the property | – | Recovery years before the recapture year |

Total recovery period for the property

**How to report.** How you report the recapture amount for clean-fuel vehicle refueling property depends on how you claimed the deduction for that property.

***Sole proprietors.*** Include the amount on the *Other income* line of either Schedule C (Form 1040) or Schedule F (Form 1040).

***Partnerships and corporations (including S corporations).*** Include the amount on the *Other income* line of the form you file.

## Basis Adjustments

You must reduce the basis of your clean-fuel vehicle property or clean-fuel vehicle refueling property by the deduction claimed. If, in a later year, you must recapture part or all of the deduction, increase the basis of the property by the amount recaptured. If the property is depreciable property, you can recover this additional basis over the property's remaining recovery period beginning with the tax year of recapture.


*If you were using the percentage tables to figure your depreciation on the property, you will not be able to continue to do so. See Publication 946 for information on figuring your depreciation without the tables.*

# Electric Vehicle Credit

You can choose to claim a tax credit for a qualified electric vehicle you place in service during the year. You can make this choice regardless of whether the property is used in a trade or business.

## Qualified Electric Vehicle

A vehicle is a qualified electric vehicle if it meets all of the following requirements.

1. It is a motor vehicle (defined earlier) powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electrical current.
2. You were the first person to use it.
3. You acquired it for your own use and not for resale.
4. It has never been used as a nonelectric vehicle.
5. It is not nonqualifying property, defined earlier.


*Hybrid gas-electric vehicles are not qualified electric vehicles. However, certain of these vehicles may qualify for clean-fuel vehicles.*

## Amount of the Credit

The credit is generally 10% of the cost of each qualified electric vehicle you place in service during the year. If your vehicle is a depreciable business asset, you must reduce the cost of the vehicle by any section 179 deduction before figuring the 10% credit. If you need information on the section 179 deduction, see Publication 946.

**Credit limits.** The credit is limited to $4,000 for each vehicle. The total credit is limited to the excess of your regular tax liability, reduced by certain credits, over your tentative minimum tax. To figure the credit limit, complete Form 8834 and attach it to your tax return.

## How To Claim the Credit

You must complete and attach Form 8834 to your tax return to claim the electric vehicle credit. Enter your credit on your tax return as discussed next.

**Individuals.** Individuals claim the credit by entering the amount from line 20 of Form 8834 on line 55 of Form 1040. Check box "c" and specify Form 8834.

**Partnerships.** Partnerships enter the amount from line 20 of Form 8834 on line 15f of Schedule K (Form 1065). The partnership then allocates the credit to the partners in Box 15, code U, of Schedule K-1 (Form 1065). See the instructions for Form 1065.

**S corporations.** S corporations enter the amount from line 20 of Form 8834 on line 13g of Schedule K (Form 1120S). The S corporation then allocates the credit to the shareholders in Box 13, code U, of Schedule K-1 (Form 1120S). See the instructions for Form 1120S.

**C corporations.** C corporations claim the credit by entering the amount from line 20 of Form 8834 in the total for line 6c of Schedule J (Form 1120), checking the "Form 8834" box. See the instructions for Form 1120.

## Recapture of the Credit

The electric vehicle credit is subject to recapture if, within 3 years after the date you place the vehicle in service, it ceases to qualify for the electric vehicle credit. You recapture the credit by adding it, or part of it, to your income tax for the year in which the recapture event occurs.

The vehicle will cease to qualify if it is changed in either of the following ways.

1. It is modified so that it is no longer primarily powered by electricity.
2. It becomes nonqualifying property, defined earlier.

**Sales or other dispositions.** If you sell or otherwise dispose of the vehicle within 3 years after the date you placed it in service and know or have reason to know that it will be changed in either of the ways described above, you are subject to the recapture rules. In other dispositions (including a disposition by reason of an accident or other casualty), the recapture rules do not apply.

If the vehicle was subject to depreciation, the credit (minus any recapture amount) is considered depreciation when figuring the part of any gain from the disposition that is ordinary income. See Publication 544 for more information on dispositions of depreciable property.

**Recapture amount.** Figure your recapture amount by multiplying the credit by the following percentage.

- 100% if the recapture date is within the first full year after the date the vehicle was placed in service.
- 66⅔% if the recapture date is within the second full year after the date the vehicle was placed in service.
- 33⅓% if the recapture date is within the third full year after the date the vehicle was placed in service.

***Recapture date.*** The recapture date is generally the date of the event that causes the recapture. However, the recapture date for an event described in item (2), earlier, is the first day of the recapture year in which the event occurs.

**How to report.** Report the recapture amount as follows.

***Individuals.*** Include the amount on line 63 of Form 1040. Write "QEVCR" on the dotted line next to line 63.

***Partnerships.*** Include in Box 15, code V, Schedule K-1 (Form 1065) the information a partner needs to figure the recapture of the credit.

***S corporations.*** Include in Box 13, code V, of Schedule K-1 (Form 1120S) the information a shareholder needs to figure the recapture of the credit.

***C corporations.*** Include the amount on line 10 of Schedule J (Form 1120), or line 4 of Part I (Form 1120-A). Check the box for "Other" and attach the required schedule. See the instructions for Form 1120.

## Basis Adjustments

If you claim a tax credit for a qualified electric vehicle you place in service during the year, you must reduce your basis in that vehicle by the lesser of:

1. $4,000, or
2. 10% of the cost of the vehicle.

This basis reduction rule applies even if the credit allowed is less than that amount.

If you must recapture part or all of the credit, increase the basis of your vehicle by the amount recaptured. If the qualified electric vehicle is depreciable property, you can recover the additional basis over the vehicle's remaining recovery period beginning with the tax year of recapture.


*If you were using the percentage tables to figure your depreciation on the vehicle, you will not be able to continue to do so. See Publication 946 for information on figuring your depreciation without the tables.*

# 13.

# Other Expenses

## What's New

**Standard mileage rate.** The standard mileage rate for the cost of operating your car, van, pickup, or panel truck in 2005 is 40.5 cents a mile from January 1 to August 31 and 48.5 cents a mile from September 1 to December 31 for all business miles. For more information, see *Car and truck expenses*, under *Miscellaneous Expenses*.

**Meal expense deduction subject to "hours of service" limits.** In 2006, this deduction increases to 75% of the reimbursed meals your employees consume while they are subject to the Department of Transportation's "hours of service" limits. For more information, see *Meal expenses when subject to "hours of service" limits*, later.

## Introduction

This chapter covers business expenses that may not have been explained to you, as a business owner, in previous chapters of this publication.

## Topics

This chapter discusses:

- Travel, meals, and entertainment
- Bribes and kickbacks
- Charitable contributions
- Education expenses
- Lobbying expenses
- Penalties and fines
- Repayments (claim of right)
- Other miscellaneous expenses

## Useful Items

You may want to see:

**Publication**

- ❑ **463** Travel, Entertainment, Gift, and Car Expenses
- ❑ **526** Charitable Contributions
- ❑ **529** Miscellaneous Deductions
- ❑ **544** Sales and Other Dispositions of Assets
- ❑ **970** Tax Benefits for Education
- ❑ **1542** Per Diem Rates

See chapter 14 for information about getting publications and forms.

# Reimbursement of Travel, Meals, and Entertainment

The following discussion explains how to handle any reimbursements or allowances you may provide for travel, meals, and entertainment expenses when incurred by your employees. If you are self-employed and report your income and expenses on Schedule C or C-EZ (Form 1040), see Publication 463.

To be deductible for tax purposes, expenses incurred for travel, meals, and entertainment must be ordinary and necessary expenses incurred while carrying on your trade or business. Generally, you also must show that entertainment expenses (including meals) are directly related to, or associated with, the conduct of your trade or business. For more information on travel, meals, and entertainment, including deductibility, see Publication 463.

## Reimbursements

A "reimbursement or allowance arrangement" provides for payment of advances, reimbursements, and charges for travel, meals, and entertainment expenses incurred by your employees during the ordinary course of business. Upon satisfying your established substantiation requirements, you can deduct the allowable amount on your tax return. Because of differences between accounting methods and tax law, these amounts may not be the same. For example, you may deduct 100% of the cost of meals on your business books and records. However, for tax purposes, only 50% of these costs are allowed by law as a tax deduction.

A reimbursement or allowance arrangement (including per diem allowances, discussed later) depends on whether you have: (1) an accountable plan or (2) a nonaccountable plan. If you reimburse these expenses under an accountable plan, then you can deduct the amount allowable to the extent of the tax law as travel, meal, and entertainment expenses on your tax return.

If you reimburse these expenses under a nonaccountable plan, then you must report the reimbursements as wages on Form W-2, *Wage and Tax Statement,* and deduct them as wages on the appropriate line of your tax return. If you make a single payment to your employees and it includes both wages and an expense reimbursement, you must specify the amount attributable to reimbursement and report it accordingly. See *Table 13–1,* Reporting Reimbursements.

Table 13–1. **Reporting Reimbursements**

| **IF the type of reimbursement (or other expense allowance) arrangement is under** | **THEN the employer reports on Form W-2** |
|---|---|
| **An accountable plan with:** | |
| *Actual expense reimbursement:* Adequate accounting made and excess returned | No amount. |
| *Actual expense reimbursement:* Adequate accounting and return of excess both required but excess not returned | The excess amount as wages in box 1. |
| *Per diem or mileage allowance up to the federal rate:* Adequate accounting made and excess returned | No amount. |
| *Per diem or mileage allowance up to the federal rate:* Adequate accounting and return of excess both required but excess not returned | The excess amount as wages in box 1. The amount up to the federal rate is reported only in box 12—it is not reported in box 1. |
| *Per diem or mileage allowance exceeds the federal rate:* Adequate accounting made up to the federal rate only and excess not returned | The excess amount as wages in box 1. The amount up to the federal rate is reported only in box 12—it is not reported in box 1. |
| **A nonaccountable plan with:** | |
| Either adequate accounting or return of excess, or both, not required by plan | The entire amount as wages in box 1. |
| **No reimbursement plan** | The entire amount as wages in box 1. |

## Accountable Plans

An accountable plan, requires your employees to meet all of the following requirements. They must:

1. have paid or incurred deductible expenses while performing services as your employees,
2. adequately account to you for these expenses within a reasonable period of time, and
3. return any excess reimbursement or allowance within a reasonable period of time.

An arrangement under which you advance money to employees is treated as meeting (3) above only if the following requirements are also met.

- The advance is reasonably calculated not to exceed the amount of anticipated expenses.
- You make the advance within a reasonable period of time.

If any expenses reimbursed under this arrangement are not substantiated, or an excess reimbursement is not returned within a reasonable period of time by an employee, you are not allowed to deduct these expenses as reimbursed under an accountable plan. Instead, treat the reimbursed expenses as paid under a nonaccountable plan, discussed later.

**Adequate accounting.** Your employees must adequately account to you for their travel, meals, and entertainment expenses. They must give you documentary evidence of their travel, mileage, and other employee business expenses. This evidence should include items such as receipts, along with either a statement of expenses, an account book, a day-planner, or similar record in which the employee entered each expense at or near the time the expense was incurred.

**Excess reimbursement or allowance.** An excess reimbursement or allowance is any amount you pay to an employee that is more than the business-related expenses for which the employee adequately accounted. The employee must return any excess reimbursement or other expense allowance to you within a reasonable period of time.

**Reasonable period of time.** A reasonable period of time depends on the facts and circumstances. Generally, actions that take place within the times specified in the following list will be treated as taking place within a reasonable period of time.

1. You give an advance within 30 days of the time the employee has incurred the expense.
2. Your employees adequately account for their expenses within 60 days after the expenses were paid or incurred.
3. Your employees return any excess reimbursement within 120 days after the expenses were paid or incurred.
4. You give a periodic statement (at least quarterly) to your employees that asks them to either return or adequately account for outstanding advances ***and*** they comply within 120 days of the date of the statement.

**How to deduct.** You can claim a deduction for travel, meals, and entertainment expenses if you reimburse your employees for these expenses under an accountable plan. Generally, the amount you can deduct for meals and entertainment, is subject to a 50% limit, discussed later. If you are a sole proprietor, or are filing as a single member Limited Liability Company, deduct the reimbursement on line 24b, Schedule C (Form 1040) or line 2, Schedule C-EZ (Form 1040).

If you are filing an income tax return for a corporation, the reimbursement should be included with the amount claimed on the *Other deductions* line of Form 1120, *U.S. Corporation Income Tax Return,* or Form 1120-A, *U.S. Corporation Short-Form Income Tax Return.* If you are filing any other business income tax return, such as a partnership or S corporation return, deduct the reimbursement on the appropriate line of the return as provided in the instructions for that return.

## Per Diem and Car Allowances

You may reimburse your employees under an accountable plan based on travel days, miles, or some other fixed allowance. In these cases, your employee is considered to have accounted to you for the amount of the expense that does not exceed the rates established by the federal government. Your employee must actually substantiate to you the other elements of the expense, such as time, place, and business purpose.

**Federal rate.** The federal rate can be figured using any one of the following methods.

1. For per diem amounts:
   a. The regular federal per diem rate.
   b. The standard meal allowance.
   c. The high-low rate.
2. For car expenses:
   a. The standard mileage rate.
   b. A fixed and variable rate (FAVR).

**Car allowance.** Your employee is considered to have accounted to you for car expenses that do not exceed the standard mileage rate. For 2005, the standard mileage rate for each business mile is 40.5 cents per mile between January 1 and August 31 and 48.5 cents per mile between September 1 and December 31.

You can choose to reimburse your employees using a fixed and variable rate (FAVR) allowance. This is an allowance that includes a combination of payments covering fixed and variable costs, such as a cents-per-mile rate to cover your employees' variable operating costs (such as gas, oil, etc.) plus a flat amount to cover your employees' fixed costs (such as depreciation, insurance, etc.). For information on using a FAVR allowance, see Revenue Procedure 2005-67 in Internal Revenue Bulletin 2005-42. You can read Revenue Procedure 2005-67 at many public libraries or online at *www.irs.gov*.

**Per diem allowance.** If your employee actually substantiates to you the other elements (discussed earlier) of the expenses reimbursed using the per diem allowance, how you report and deduct the allowance depends on whether the allowance is for lodging and meal expenses or for meal expenses only and whether the allowance is more than the federal rate.

***Regular federal per diem rate.*** The regular federal per diem rate is the highest amount the federal government will pay to its employees while away from home on travel. It has two components:

1. lodging expense, and
2. meal and incidental expense (M & IE).

The rates are different for different locations. Publication 1542 lists the rates in the continental United States.

***Standard meal allowance.*** The federal rate for meal and incidental expenses (M & IE) is the standard meal allowance. You may pay only an M & IE allowance to employees who travel away from home if:

- you pay the employee for actual expenses for lodging based on receipts submitted to you,
- you provide for the lodging,
- you pay for the actual expense of the lodging directly to the provider,
- you do not have reasonable belief that lodging expenses were incurred by the employee, or
- the allowance is computed on a basis similar to that used in computing the employee's wages (that is, number of hours worked or miles traveled).

***Internet access.*** Per diem rates are available on the Internet. You can access per diem rates at *www.gsa.gov.*

***High-low method.*** This is a simplified method of computing the federal per diem rate for lodging and meal expenses for traveling within the continental United States. It eliminates the need to keep a current list of the per diem rate in effect for each city in the continental United States.

Under the high-low method, the per diem amount for travel during 2005 is $204 ($46 for M & IE) for certain high-cost locations. All other areas have a per diem amount of $129 ($36 for M & IE). The high-cost locations eligible for the $204 per diem amount under the high-low method are listed in Publication 1542.

**Reporting per diem and car allowances.** The following discussion explains how to report per diem and car allowances. The manner in which you report them depends on how the allowance compares to the federal rate. See *Table 13-1.*

***Allowance less than or equal to the federal rate.*** If your allowance for the employee is less than or equal to the appropriate federal rate, that allowance is not included as part of the employee's pay in box 1 of the employee's Form W-2. Deduct the allowance as travel expenses (including meals that may be subject to the 50% limit, discussed later). See *How to deduct* under *Accountable Plans,* earlier.

***Allowance more than the federal rate.*** If your employee's allowance is more than the appropriate federal rate, you must report the allowance as two separate items.

Include the allowance amount up to the federal rate in box 12 (code L) of the employee's Form W-2. Deduct it as travel expenses (as explained above). This part of the allowance is treated as reimbursed under an accountable plan.

Include the amount that is more than the federal rate in box 1 (and in boxes 3 and 5 if they apply) of the employee's Form W-2. Deduct it as wages subject to income tax withholding, social security, Medicare, and federal unemployment taxes. This part of the allowance is treated as reimbursed under a nonaccountable plan as explained later under *Nonaccountable Plans.*

## Meals and Entertainment

Under an accountable plan, you can generally deduct only 50% of any otherwise deductible business-related meal and entertainment expenses you reimburse your employees. The deduction limit applies even if you reimburse them for 100% of the expenses.

**Application of the 50% limit.** The 50% deduction limit applies to reimbursements you make to your employees for expenses they incur for meals while traveling away from home on business and for entertaining business customers at your place of business, a restaurant, or another location. It applies to expenses incurred at a business convention or reception, business meeting, or business luncheon at a club. The deduction limit may also apply to meals you furnish on your premises to your employees.

***Related expenses.*** Taxes and tips relating to a meal or entertainment activity you reimburse to your employee under an accountable plan are included in the amount subject to the 50% limit. Reimbursements you make for expenses, such as cover charges for admission to a nightclub, rent paid for a room to hold a dinner or cocktail party, or the amount you pay for parking at a sports arena, are all subject to the 50% limit. However, the cost of transportation to and from an otherwise allowable business meal or a business-related entertainment activity is not subject to the 50% limit.

**Amount subject to 50% limit.** If you provide your employees with a per diem allowance only for meal and incidental expenses, the amount treated as an expense for food and beverages is the lesser of the following.

- The per diem allowance.

- The federal rate for M & IE.

If you provide your employees with a per diem allowance that covers lodging, meals, and incidental expenses, you must treat an amount equal to the federal M & IE rate for the area of travel as an expense for food and beverages. If the per diem allowance you provide is less than the federal per diem rate for the area of travel, you can treat 40% of the per diem allowance as the amount for food and beverages.

**Meal expenses when subject to "hours of service" limits.** For tax years beginning in 2005, 70% of the reimbursed meals your employees consume while away from their tax home on business during, or incident to, any period subject to the Department of Transportation's hours of service limits are deductible.

See Publication 463 for a detailed discussion of individuals subject to the Department of Transportation's hours of service limits.

**De minimis (minimal) fringe benefit.** The 50% limit does not apply to an expense for food or beverage that is excluded from the gross income of an employee because it is a de minimis fringe benefit. See Publication 15-B for additional information on de minimis fringe benefits.

**Company cafeteria or executive dining room.** The cost of food and beverages you provide primarily to your employees on your business premises is deductible. This includes the cost of maintaining the facilities for providing the food and beverages. These expenses are subject to the 50% limit unless they qualify as a de minimis fringe benefit, discussed in Publication 15-B, or unless they are compensation to your employees and you treat them as provided under a nonaccountable plan.

**Employee activities.** The expense of providing recreational, social, or similar activities (including the use of a facility) for your employees is deductible. The benefit must be primarily for your employees who are not highly compensated.

For this purpose, a highly compensated employee is an employee who meets either of the following requirements.

1. Owned a 10% or more interest in the business during the year or the preceding year. An employee is treated as owning any interest owned by his or her brother, sister, spouse, ancestors, and lineal descendants.
2. Received more than $95,000 in pay for the preceding year. You may choose to include only employees who were also in the top 20% of employees when ranked by pay for the preceding year.

For example, the expenses for food, beverages, and entertainment for a company-wide picnic are not subject to the 50% limit.

### Nonaccountable Plans

A nonaccountable plan is an arrangement that does not meet the requirements for an accountable plan. All amounts paid, or treated as paid, under a nonaccountable plan are reported as wages on Form W-2. The payments are subject to income tax withholding, social security, Medicare, and federal unemployment taxes. You can deduct the reimbursement as compensation or wages only to the extent it meets the deductibility tests for employees' pay in chapter 2. Deduct the allowable amount as compensation or wages on the appropriate line of your income tax return, as provided in its instructions.

Generally, amounts paid for meals, entertainment, and amusement provided to individuals who are not your employees are not subject to the 50% limit. Such activities must be directly related to the active conduct of your trade or business. Examples include:

- Amounts paid for meals, goods, services, or the use of a facility. You are allowed a deduction only to the extent it is included in the gross income of the recipient as compensation for services or as a prize or award.
- Expenses that exceed $600 and are required to be reported on an information return, for example, Form 1099-MISC. See the *General Instructions for Forms 1099, 1098, 5498, and W-2G* for more information about reporting requirements.
- The cost of providing meals, entertainment, goods and services, or use of facilities you sell to the public. For example, if you operate a nightclub, your expense for the entertainment you furnish to your customers, such as a floor show, is a business expense that is fully deductible.
- The cost of providing meals, entertainment, or recreational facilities to the general public as a means of advertising or promoting goodwill in the community is fully deductible.

# Miscellaneous Expenses

In addition to travel, meal, and entertainment expenses, other miscellaneous expenses that are deductible, subject to limitations, include:

- Amounts paid for the reasonable cost of advertising that are directly related to your business activities. Generally, amounts paid to influence legislation (i.e., lobbying) are not deductible for tax purposes. See *Lobbying expenses,* later.
- Amounts paid that are directly related to the conduct of business meetings of your employees, partners, stockholders, agents, or directors. Some minor social activities may be allowed, however these expenses are subject to the 50% limit.
- Amounts paid that are directly related to and necessary for attending business meetings or conventions of certain tax-exempt organizations. These organizations include business leagues, chambers of commerce, real estates boards, and trade and professional associations.

**Advertising expenses.** You can usually deduct as a business expense the cost of institutional or goodwill advertising to keep your name before the public if it relates to business you reasonably expect to gain in the future. For example, the cost of advertising that encourages people to contribute to the Red Cross, to buy U.S. Savings Bonds, or to participate in similar causes is usually deductible.

**Anticipated liabilities.** Anticipated liabilities or reserves for anticipated liabilities are not deductible. For example, assume you sold 1-year TV service contracts this year totaling $50,000. From experience, you know you will have expenses of about $15,000 in the coming year for these contracts. You cannot deduct any of the $15,000 this year by charging expenses to a reserve or liability account. You can deduct your expenses only when you actually pay or accrue them, depending on your accounting method.

**Bribes and kickbacks.** Engaging in the payment of bribes or kickbacks is a serious criminal matter. Such activity could result in criminal prosecution. Any payments that appear to have been made, either directly or indirectly, to an official or employee of any government or an agency or instrumentality of any government are not deductible for tax purposes and are in violation of the law.

Payments paid directly or indirectly to a person in violation of any federal or state law (but only if that state law is generally enforced, defined below) that provides for a criminal penalty or for the loss of a license or privilege to engage in a trade or business are also not allowed as a deduction for tax purposes.

***Meaning of "generally enforced."*** A state law is considered generally enforced unless it is never enforced or enforced only for infamous persons or persons whose violations are extraordinarily flagrant. For example, a state law is generally enforced unless proper reporting of a violation of the law results in enforcement only under unusual circumstances.

***Kickbacks.*** A kickback is a payment for referring a client, patient, or customer. The common kickback situation occurs when money or property is given to someone as payment for influencing a third party to purchase from, use the services of, or otherwise deal with the person who pays the kickback. In many cases, the person whose business is being sought or enjoyed by the person who pays the kickback is not aware of the payment.

For example, the Yard Corporation is in the business of repairing ships. It engages in the practice of returning 10% of the repair bills as kickbacks to the captains and chief officers of the vessels it repairs. Although this practice is considered an ordinary and necessary expense of getting business, it is clearly a violation of a state law that is generally enforced. These expenditures are not deductible for tax purposes, whether or not the owners of the shipyard are subsequently prosecuted.

***Form 1099-MISC.*** It does not matter whether any kickbacks paid during the tax year are deductible on your income tax return in regards to information reporting. See Form 1099-MISC for more information.

**Car and truck expenses.** The costs of operating a car, truck, or other vehicle in your business are deductible. For more information on how to figure your deduction, see Publication 463.

**Charitable contributions.** Cash payments to an organization, charitable or otherwise, may be deductible as business expenses if the payments are not charitable contributions or gifts. If the payments are charitable contributions or gifts, you cannot deduct them as business expenses. However, corporations (other than S corporations) can deduct charitable contributions on their income tax returns, subject to limitations. See the *Instructions for Form 1120 and 1120-A* for more information. Sole proprietors, partners in a partnership, or shareholders in an S corporation may be able to deduct charitable contributions made by their business on Schedule A (Form 1040).

***Example.*** You paid $15 to a local church for a half-page ad in a program for a concert it is sponsoring. The purpose of the ad was to encourage readers to buy your products. Your payment is not a charitable contribution. However, you may deduct it as an advertising expense.

***Example.*** You made a $100,000 donation to a committee organized by the local Chamber of Commerce to bring a convention to your city, intended to increase business activity, including yours. Your payment is not a charitable contribution. However, you may deduct it as a business expense.

See Publication 526 for a discussion of donated inventory, including capital gain property.

**Club dues and membership fees.** Generally, amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or any other social purpose are not deductible. Clubs organized for business, pleasure, recreation, or other social purpose include, but are not limited to country clubs, golf and athletic clubs, hotel clubs, sporting clubs, airline clubs, and clubs operated to provide meals under circumstances generally considered to be conducive to business discussions.

***Exception.*** The following organizations are not treated as clubs organized for business, pleasure, recreation, or other social purpose unless one of the main purposes is to conduct entertainment activities for members or their guests or to provide members or their guests with access to entertainment facilities.

- Boards of trade.
- Business leagues.
- Chambers of commerce.
- Civic or public service organizations.
- Professional organizations such as bar associations and medical associations.
- Real estate boards.
- Trade associations.

**Credit card convenience fees.** Credit card companies charge a fee to businesses who accept their cards. This fee when paid or incurred by the business can be deducted as a business expense.

**Damages recovered.** Special rules apply to compensation you receive for damages sustained as a result of patent infringement, breach of contract or fiduciary duty, or antitrust violations. You must include this compensation in your income. However, you may be able to take a special deduction. The deduction applies only to amounts recovered for actual injury, not any additional amount. The deduction is the smaller of the following.

- The amount you received or accrued for damages in the tax year reduced by the amount you paid or incurred in the year to recover that amount.
- Your losses from the injury you have not deducted.

**Demolition expenses or losses.** Amounts paid or incurred to demolish a structure are not deductible. These amounts are added to the basis of the land where the demolished structure was located. Any loss for the remaining undepreciated basis of a demolished structure would not be recognized until the property is disposed.

**Education expenses.** Ordinary and necessary expenses paid for the cost of the education and training of your employees are deductible. See *Education Expenses* in chapter 2.

You may also deduct the cost of your own education (including certain related travel) related to your trade or business. You must be able to show the education maintains or improves skills required in your trade or business, or that it is required by law or regulations, for keeping your license to practice, status, or job. For example, an attorney can deduct the cost of attending Continuing Legal Education (CLE) classes that are required by the state bar association to maintain his or her license to practice law.

Education expenses you incur to meet the minimum requirements of your present trade or business, or those that qualify you for a new trade or business, are not deductible. This is true even if the education maintains or improves skills presently required in your business. For more information on education expenses, see Publication 970.

**Franchise, trademark, trade name.** If you buy a franchise, trademark, or trade name, you can deduct the amount you pay or incur as a business expense only if your payments are part of a series of payments that are:

1. Contingent on productivity, use, or disposition of the item,
2. Payable at least annually for the entire term of the transfer agreement, and
3. Substantially equal in amount (or payable under a fixed formula).

When determining the term of the transfer agreement, include all renewal options and any other period for which you and the transferrer reasonably expect the agreement to be renewed.

A franchise includes an agreement that gives one of the parties to the agreement the right to distribute, sell, or provide goods, services, or facilities within a specified area.

**Impairment-related expenses.** If you are disabled, you can deduct expenses necessary for you to be able to work (impairment-related expenses) as a business expense, rather than as a medical expense.

You are disabled if you have either of the following.

- A physical or mental disability (for example, blindness or deafness) that functionally limits your being employed.
- A physical or mental impairment that substantially limits one or more of your major life activities.

The expense qualifies as a business expense if all the following apply.

- Your work clearly requires the expense for you to satisfactorily perform that work.
- The goods or services purchased are clearly not needed or used, other than incidentally, in your personal activities.
- Their treatment is not specifically provided for under other tax law provisions.

***Example.*** You are blind. You must use a reader to do your work, both at and away from your place of work. The reader's services are only for your work. You can deduct your expenses for the reader as a business expense.

**Interview expense allowances.** Reimbursements you make to job candidates for transportation or other expenses related to interviews for possible employment are not wages. You can deduct the reimbursements as a business expense. However, expenses for food, beverages, and entertainment are subject to the 50% limit discussed earlier under *Meals and Entertainment.*

**Legal and professional fees.** Fees charged by accountants and attorneys that are ordinary and necessary expenses directly related to operating your business are deductible as business expenses. However, usually legal fees you pay to acquire business assets are not deductible. These costs are added to the basis of the property.

Fees that include payments for work of a personal nature (such as drafting a will, or damages arising from a personal injury), are not allowed as a business deduction on Schedule C or C-EZ. If the invoice includes both business and personal charges, compute the business portion as follows: multiply the total amount of the bill by a fraction, the numerator of which is the amount attributable to business matters, the denominator of which is the total amount paid. The result is the portion of the invoice attributable to business expenses. The portion attributable to personal matters is the difference between the total amount and the business portion (computed above).

Legal fees relating to personal tax advice may be deductible on Line 22, Schedule A (Form 1040), if you itemize deductions. However, the deduction is subject to the 2% limitation on miscellaneous itemized deductions. See Publication 529, Miscellaneous Deductions.

***Tax preparation fees.*** The cost of hiring a tax professional, such as a C.P.A., to prepare that part of your tax return relating to your business as a sole proprietor is deductible on Schedule C or Schedule C-EZ. Any remaining cost may be deductible on Schedule A (Form 1040) if you itemize deductions.

You can also claim a business deduction for amounts paid or incurred in resolving asserted

tax deficiencies for your business operated as a sole proprietor.

**Licenses and regulatory fees.** Licenses and regulatory fees for your trade or business paid annually to state or local governments generally are deductible. Some licenses and fees may have to be amortized. See chapter 9 for more information.

**Lobbying expenses.** Generally, lobbying expenses are not deductible. Lobbying expenses include amounts paid or incurred for any of the following activities.

- Influencing legislation.
- Participating in or intervening in any political campaign for, or against, any candidate for public office.
- Attempting to influence the general public, or segments of the public, about elections, legislative matters, or referendums.
- Communicating directly with covered executive branch officials (defined later) in any attempt to influence the official actions or positions of those officials.
- Researching, preparing, planning, or coordinating any of the preceding activities.

Your expenses for influencing legislation and communicating directly with a covered executive branch official include a portion of your labor costs and general and administrative costs of your business. For information on making this allocation, see section 1.162-28 of the regulations.

You cannot claim a charitable or business expense deduction for amounts paid to an organization if both of the following apply.

- The organization conducts lobbying activities on matters of direct financial interest to your business.
- A principal purpose of your contribution is to avoid the rules discussed earlier that prohibit a business deduction for lobbying expenses.

If a tax-exempt organization, other than a section 501(c)(3) organization, provides you with a notice on the part of dues that is allocable to nondeductible lobbying and political expenses, you cannot deduct that part of the dues.

***Covered executive branch official.*** For purposes of this discussion, a covered executive branch official is any of the following.

1. The President.
2. The Vice President.
3. Any officer or employee of the White House Office of the Executive Office of the President and the two most senior level officers of each of the other agencies in the Executive Office.
4. Any individual who:
   a. Is serving in a position in Level I of the Executive Schedule under section 5312 of title 5, United States Code,
   b. Has been designated by the President as having Cabinet-level status, or
   c. Is an immediate deputy of an individual listed in item (a) or (b).

***Exceptions to denial of deduction.*** The general denial of the deduction does not apply to the following.

- Expenses of appearing before, or communicating with, any local council or similar governing body concerning its legislation (local legislation) if the legislation is of direct interest to you or to you and an organization of which you are a member. An Indian tribal government is treated as a local council or similar governing body.
- Any in-house expenses for influencing legislation and communicating directly with a covered executive branch official if those expenses for the tax year do not exceed $2,000 (excluding overhead expenses).
- Expenses incurred by taxpayers engaged in the trade or business of lobbying (professional lobbyists) on behalf of another person (but does apply to payments by the other person to the lobbyist for lobbying activities).

**Moving machinery.** Generally, the cost of moving machinery from one city to another is a deductible expense. So is the cost of moving machinery from one plant to another, or from one part of your plant to another. You can deduct the cost of installing the machinery in the new location. However, you must capitalize the costs of installing or moving newly purchased machinery.

**Outplacement services.** The costs of outplacement services you provide to your employees to help them find new employment, such as career counseling, résumé assistance, skills assessment, etc. are deductible.

The costs of outplacement services may cover more than one deduction category. For example, deduct as a utilities expense the cost of telephone calls made under this service and deduct as rental expense the cost of renting machinery and equipment for this service.

For information on whether the value of outplacement services is includable in your employees' income, see Publication 15-B.

**Penalties and fines.** Penalties paid for late performance or nonperformance of a contract are generally deductible. For instance, you own and operate a construction company. You have been contracted to construct a building by a certain date. Due to construction delays, the building is not completed and ready for occupancy on the date stipulated in the contract. You are now required to pay an additional amount for each day that completion is delayed beyond the completion date stipulated in the contract. These additional costs are deductible business expenses.

On the other hand, penalties or fines paid to any government agency or instrumentality because of a violation of any law are not deductible. These fines or penalties include the following amounts.

- Paid because of a conviction for a crime or after a plea of guilty or no contest in a criminal proceeding.
- Paid as a penalty imposed by federal, state, or local law in a civil action, including certain additions to tax and additional amounts and assessable penalties imposed by the Internal Revenue Code.
- Paid in settlement of actual or possible liability for a fine or penalty, whether civil or criminal.
- Forfeited as collateral posted for a proceeding that could result in a fine or penalty.

Examples of nondeductible penalties and fines include the following.

- Fines for violating city housing codes.
- Fines paid by truckers for violating state maximum highway weight laws.
- Fines for violating air quality laws.
- Civil penalties for violating federal laws regarding mining safety standards and discharges into navigable waters.

A fine or penalty does not include any of the following.

- Legal fees and related expenses to defend yourself in a prosecution or civil action for a violation of the law imposing the fine or civil penalty.
- Court costs or stenographic and printing charges.
- Compensatory damages paid to a government.

**Political contributions.** Contributions or gifts paid to political parties or candidates are not deductible. In addition, expenses paid or incurred to take part in any political campaign of a candidate for public office are not deductible.

***Indirect political contributions.*** You cannot deduct indirect political contributions and costs of taking part in political activities as business expenses. Examples of nondeductible expenses include the following.

- Advertising in a convention program of a political party, or in any other publication if any of the proceeds from the publication are for, or intended for, the use of a political party or candidate.
- Admission to a dinner or program (including, but not limited to, galas, dances, film presentations, parties, and sporting events) if any of the proceeds from the function are for, or intended for, the use of a political party or candidate.
- Admission to an inaugural ball, gala, parade, concert, or similar event if identified with a political party or candidate.

**Repairs.** The cost of repairing or improving property used in your trade or business is either a deductible or capital expense. Routine maintenance that keeps your property in a normal efficient operating condition, but that does not materially increase the value or substantially prolong the useful life of the property is deductible in the year that it is incurred. Otherwise, the cost must be depreciated over the useful life of the property. See Form 4562 and its instructions for how to compute and claim the depreciation deduction.

The cost of repairs includes the costs of labor, supplies, and certain other items. The value of your own labor is not deductible. Examples of repairs include:

- Reconditioning floors (but not replacement),
- Repainting the interior and exterior walls of a building,
- Cleaning and repairing roofs and gutters, and
- Fixing plumbing leaks (but not replacement of fixtures).

**Repayments.** If you had to repay an amount you included in your income in an earlier year, you may be able to deduct the amount repaid for the year in which you repaid it. Or, if the amount you repaid is more than $3,000, you may be able to take a credit against your tax for the year in which you repaid it.

***Type of deduction.*** The type of deduction you are allowed in the year of repayment depends on the type of income you included in the earlier year. For instance, if you repay an amount you previously reported as a capital gain, deduct the repayment as a capital loss on Schedule D (Form 1040). If you reported it as self-employment income, deduct it as a business deduction on Schedule C or Schedule C-EZ (Form 1040) or Schedule F (Form 1040).

If you reported the amount as wages, unemployment compensation, or other nonbusiness ordinary income, enter it on Schedule A (Form 1040) as a miscellaneous itemized deduction that is subject to the 2% limitation. However, if the repayment is over $3,000 and Method 1 (discussed later) applies, deduct it on Schedule A (Form 1040) as a miscellaneous itemized deduction that is not subject to the 2% limitation.

***Repayment—$3,000 or less.*** If the amount you repaid was $3,000 or less, deduct it from your income in the year you repaid it.

***Repayment—over $3,000.*** If the amount you repaid was more than $3,000, you can deduct the repayment, as described earlier. However, you can instead choose to take a tax credit for the year of repayment if you included the income under a "claim of right." This means that at the time you included the income, it appeared that you had an unrestricted right to it. If you qualify for this choice, figure your tax under both methods and use the method that results in less tax.

***Method 1.*** Figure your tax for 2005 claiming a deduction for the repaid amount.

***Method 2.*** Figure your tax for 2005 claiming a credit for the prepaid amount. Follow these steps.

1. Figure your tax for 2005 without deducting the repaid amount.
2. Refigure your tax from the earlier year without including in income the amount you repaid in 2005.
3. Subtract the tax in (2) from the tax shown on your return for the earlier year. This is the amount of your credit.
4. Subtract the answer in (3) from the tax for 2005 figured without the deduction (step 1).

If Method 1 results in less tax, deduct the amount repaid as discussed earlier under *Type of deduction.*

If Method 2 results in less tax, claim the credit on line 70 of Form 1040, and write "I.R.C. 1341" next to line 70.

***Example.*** For 2004, you filed a return and reported your income on the cash method. In 2005, you repaid $5,000 included in your 2004 gross income under a claim of right. Your filing status in 2005 and 2004 is single. Your income and tax for both years are as follows:

| | 2004 With Income | 2004 Without Income |
|---|---|---|
| Taxable Income | $15,000 | $10,000 |
| Tax | $ 1,896 | $ 1,146 |

| | 2005 Without Deduction | 2005 With Deduction |
|---|---|---|
| Taxable Income | $49,950 | $44,950 |
| Tax | $9,159 | $ 7,909 |

Your tax under Method 1 is $7,909. Your tax under Method 2 is $8,409, figured as follows:

| | |
|---|---|
| Tax previously determined for 2004 | $ 1,896 |
| Less: Tax as refigured . . . . . | – 1,146 |
| Decrease in 2004 tax | $ 750 |
| Regular tax liability for 2005 . . . . . | $9,159 |
| Less: Decrease in 2004 tax . . . . . | – 750 |
| **Refigured tax for 2005** | **$ 8,409** |

Because you pay less tax under Method 1, you should take a deduction for the repayment in 2005.

***Repayment does not apply.*** This discussion does not apply to the following.

- Deductions for bad debts.
- Deductions from sales to customers, such as returns and allowances, and similar items.
- Deductions for legal and other expenses of contesting the repayment.

***Year of deduction (or credit).*** If you use the cash method of accounting, you can take the deduction (or credit, if applicable) for the tax year in which you actually make the repayment. If you use any other accounting method, you can deduct the repayment or claim a credit for it only for the tax year in which it is a proper deduction under your accounting method. For example, if you use the accrual method, you are entitled to the deduction or credit in the tax year in which the obligation for the repayment accrues.

**Subscriptions.** Subscriptions to professional, technical, and trade journals that deal with your business field are deductible.

**Supplies and materials.** Unless you have deducted the cost in any earlier year, you generally can deduct the cost of materials and supplies actually consumed and used during the tax year.

If you keep incidental materials and supplies on hand, you can deduct the cost of the incidental materials and supplies you bought during the tax year if all the following requirements are met.

- You do not keep a record of when they are used.
- You do not take an inventory of the amount on hand at the beginning and end of the tax year.
- This method does not distort your income.

You can also deduct the cost of books, professional instruments, equipment, etc., if you normally use them within a year. However, if the usefulness of these items extends substantially beyond the year they are placed in service, you generally must recover their costs through depreciation. For more information regarding depreciation see Publication 946, How to Depreciate Property.

**Utilities.** Business expenses for heat, lights, power, telephone service, and water and sewerage are deductible. However, any part attributable to personal use is not deductible.

***Telephone.*** The cost of basic local telephone service (including any taxes) for the first telephone line you have in your home, even though you have an office in your home is not deductible. However, charges for business long-distance phone calls on that line, as well as the cost of a second line into your home used exclusively for business, are deductible business expenses.

# 14. How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get more information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

**Contacting your Taxpayer Advocate.** If you have attempted to deal with an IRS problem unsuccessfully, you should contact your Taxpayer Advocate.

The Taxpayer Advocate independently represents your interests and concerns within the IRS by protecting your rights and resolving problems that have not been fixed through normal channels. While Taxpayer Advocates cannot change the tax law or make a technical tax decision, they can clear up problems that resulted from previous contacts and ensure that your case is given a complete and impartial review.

To contact your Taxpayer Advocate:

- Call the Taxpayer Advocate toll free at 1-877-777-4778.
- Call, write, or fax the Taxpayer Advocate office in your area.
- Call 1-800-829-4059 if you are a TTY/TDD user.
- Visit the website at *www.irs.gov/advocate*.

For more information, see Publication 1546, How To Get Help With Unresolved Tax Problems (now available in Chinese, Korean, Russian, and Vietnamese, in addition to English and Spanish).

**Free tax services.** To find out what services are available, get Publication 910, IRS Guide to Free Tax Services. It contains a list of free tax publications and an index of tax topics. It also describes other free tax information services, including tax education and assistance programs and a list of TeleTax topics.

**Internet.** You can access the IRS website 24 hours a day, 7 days a week, at *www.irs.gov* to:

- *E-file* your return. Find out about commercial tax preparation and *e-file* services available free to eligible taxpayers.
- Check the status of your 2005 refund. Click on *Where's My Refund.* Be sure to wait at least 6 weeks from the date you filed your return (3 weeks if you filed electronically) and have your 2005 tax return available because you will need to know your social security number, your filing status, and the exact whole dollar amount of your refund.
- Download forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- Figure your withholding allowances using our Form W-4 calculator.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.

**Phone.** Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call 1-800-829-3676 to order current-year forms, instructions, and publications and prior-year forms and instructions. You should receive your order within 10 days.
- *Asking tax questions.* Call the IRS with your tax questions at 1-800-829-1040.
- *Solving problems.* You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to*www.irs.gov/localcontacts* or look in the phone book under *United States Government, Internal Revenue Service.*
- *TTY/TDD equipment.* If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax or to order forms and publications.
- *TeleTax topics.* Call 1-800-829-4477 and press 2 to listen to pre-recorded messages covering various tax topics.
- *Refund information.* If you would like to check the status of your 2005 refund, call 1-800-829-4477 for automated refund information and follow the recorded instructions or call 1-800-829-1954. Be sure to wait at least 6 weeks from the date you filed your return (3 weeks if you filed electronically). Have your 2005 tax return available because you will need to know your social security number, your filing status, and the exact whole dollar amount of your refund.

***Evaluating the quality of our telephone services.*** To ensure that IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to sometimes listen in on or record telephone calls. Another is to ask some callers to complete a short survey at the end of the call.

**Walk-in.** Many products and services are available on a walk-in basis.

- *Products.* You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county government offices, credit unions, and office supply stores have a collection of products available to print from a CD-ROM or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.
- *Services.* You can walk in to your local Taxpayer Assistance Center every business day for personal, face-to-face tax help. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you're more comfortable talking with someone in person, visit your local Taxpayer Assistance Center where you can spread out your records and talk with an IRS representative face-to-face. No appointment is necessary, but if you prefer, you can call your local Center and leave a message requesting an appointment to resolve a tax account issue. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. To find the number, go to *www.irs.gov/localcontacts* or look in the phone book under *United States Government, Internal Revenue Service.*

**Mail.** You can send your order for forms, instructions, and publications to the address below and receive a response within 10 business days after your request is received.

National Distribution Center
P.O. Box 8903
Bloomington, IL 61702-8903

**CD-ROM for tax products.** You can order IRS Publication 1796, Federal Tax Products on CD-ROM, and obtain:

- A CD that is released twice so you have the latest products. The first release ships in late December and the final release ships in late February.
- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and instructions.
- Tax Map: an electronic research tool and finding aid.
- Tax law frequently asked questions (FAQs).
- Tax Topics from the IRS telephone response system.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.
- Toll-free and email technical support.

Buy the CD-ROM from National Technical Information Service (NTIS) at *www.irs.gov/cdorders* for $25 (no handling fee) or call 1-877-233-6767 toll free to buy the CD-ROM for $25 (plus a $5 handling fee).

**CD-ROM for small businesses.** IRS Publication 3207, Small Business Resource Guide CD-ROM for 2005, has a new look and enhanced navigation features. This year's CD includes:

- Helpful information, such as how to prepare a business plan, find financing for your business, and much more.
- All the business tax forms, instructions, and publications needed to successfully manage a business.
- Tax law changes for 2005.
- IRS Tax Map to help you find forms, instructions, and publications by searching on a keyword or topic.
- Web links to various government agencies, business associations, and IRS organizations.
- "Rate the Product" survey—your opportunity to suggest changes for future editions.

An updated version of this CD is available each year in early April. You can get a free copy by calling 1-800-829-3676 or by visiting *www.irs.gov/smallbiz*.

To help us develop a more useful index, please let us know if you have ideas for index entries. See "Comments and Suggestions" in the "Introduction" for the ways you can reach us.

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## Tax Publications for Business Taxpayers

See *How To Get Tax Help* for a variety of ways to get publications, including by computer, phone, and mail.

### General Guides

**1** Your Rights as a Taxpayer
**17** Your Federal Income Tax (For Individuals)
**334** Tax Guide for Small Business (For Individuals Who Use Schedule C or C-EZ)
**509** Tax Calendars for 2006
**553** Highlights of 2005 Tax Changes
**910** Guide to Free Tax Services

### Employer's Guides

**15** (Circular E), Employer's Tax Guide
**15-A** Employer's Supplemental Tax Guide
**15-B** Employer's Tax Guide to Fringe Benefits
**51** (Circular A), Agricultural Employer's Tax Guide
**80** (Circular SS), Federal Tax Guide For Employers in the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands
**926** Household Employer's Tax Guide

### Specialized Publications

**225** Farmer's Tax Guide
**378** Fuel Tax Credits and Refunds
**463** Travel, Entertainment, Gift, and Car Expenses
**505** Tax Withholding and Estimated Tax
**510** Excise Taxes for 2006
**515** Withholding of Tax on Nonresident Aliens and Foreign Entities
**517** Social Security and Other Information for Members of the Clergy and Religious Workers
**527** Residential Rental Property
**534** Depreciating Property Placed in Service Before 1987
**535** Business Expenses
**536** Net Operating Losses (NOLs) for Individuals, Estates, and Trusts
**537** Installment Sales
**538** Accounting Periods and Methods
**541** Partnerships
**542** Corporations
**544** Sales and Other Dispositions of Assets
**551** Basis of Assets
**556** Examination of Returns, Appeal Rights, and Claims for Refund
**560** Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)
**561** Determining the Value of Donated Property
**583** Starting a Business and Keeping Records
**587** Business Use of Your Home (Including Use by Daycare Providers)
**594** What You Should Know About The IRS Collection Process
**595** Capital Construction Fund for Commercial Fishermen
**597** Information on the United States-Canada Income Tax Treaty
**598** Tax on Unrelated Business Income of Exempt Organizations
**686** Certification for Reduced Tax Rates in Tax Treaty Countries
**901** U.S. Tax Treaties
**908** Bankruptcy Tax Guide
**925** Passive Activity and At-Risk Rules
**946** How To Depreciate Property
**947** Practice Before the IRS and Power of Attorney
**954** Tax Incentives for Distressed Communities
**1544** Reporting Cash Payments of Over $10,000 (Received in a Trade or Business)
**1546** The Taxpayer Advocate Service of the IRS—How to Get Help With Unresolved Tax Problems

### Spanish Language Publications

**1SP** Derechos del Contribuyente
**179** (Circular PR), Guía Contributiva Federal Para Patronos Puertorriqueños
**579SP** Cómo Preparar la Declaración de Impuesto Federal
**594SP** Qué es lo Debemos Saber Sobre El Proceso de Cobro del IRS
**850** English-Spanish Glossary of Words and Phrases Used in Publications Issued by the Internal Revenue Service
**1544SP** Informe de Pagos en Efectivo en Exceso de $10,000 (Recibidos en una Ocupación o Negocio)

## Commonly Used Tax Forms

See *How To Get Tax Help* for a variety of ways to get forms, including by computer, phone, and mail.

### Form Number and Title

**W-2** Wage and Tax Statement
**W-4** Employee's Withholding Allowance Certificate
**940** Employer's Annual Federal Unemployment (FUTA) Tax Return
**940-EZ** Employer's Annual Federal Unemployment (FUTA) Tax Return
**941** Employer's Quarterly Federal Tax Return
**1040** U.S. Individual Income Tax Return
- **Sch A & B** Itemized Deductions & Interest and Ordinary Dividends
- **Sch C** Profit or Loss From Business
- **Sch C-EZ** Net Profit From Business
- **Sch D** Capital Gains and Losses
- **Sch D-1** Continuation Sheet for Schedule D
- **Sch E** Supplemental Income and Loss
- **Sch F** Profit or Loss From Farming
- **Sch H** Household Employment Taxes
- **Sch J** Income Averaging for Farmers and Fishermen
- **Sch R** Credit for the Elderly or the Disabled
- **Sch SE** Self-Employment Tax

**1040-ES** Estimated Tax for Individuals
**1040X** Amended U.S. Individual Income Tax Return
**1065** U.S. Return of Partnership Income
- **Sch D** Capital Gains and Losses
- **Sch K-1** Partner's Share of Income, Deductions, Credits, etc.

**1120** U.S. Corporation Income Tax Return
**1120-A** U.S. Corporation Short-Form Income Tax Return

### Form Number and Title

**1120S** U.S. Income Tax Return for an S Corporation
- **Sch D** Capital Gains and Losses and Built-In Gains
- **Sch K-1** Shareholder's Share of Income, Deductions, Credits, etc.

**2106** Employee Business Expenses
**2106-EZ** Unreimbursed Employee Business Expenses
**2210** Underpayment of Estimated Tax by Individuals, Estates, and Trusts
**2441** Child and Dependent Care Expenses
**2848** Power of Attorney and Declaration of Representative
**3800** General Business Credit
**3903** Moving Expenses
**4562** Depreciation and Amortization
**4797** Sales of Business Property
**4868** Application for Automatic Extension of Time To File U.S. Individual Income Tax Return
**5329** Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts
**6252** Installment Sale Income
**8283** Noncash Charitable Contributions
**8300** Report of Cash Payments Over $10,000 Received in a Trade or Business
**8582** Passive Activity Loss Limitations
**8606** Nondeductible IRAs
**8822** Change of Address
**8829** Expenses for Business Use of Your Home