

Part III

Administrative, Procedural, and Miscellaneous

Section 198: Expensing of environmental remediation costs.

Rev. Proc. 98-47

SECTION 1. PURPOSE

This revenue procedure provides procedures for taxpayers to make the election under § 198 of the Internal Revenue Code ("§ 198 election") to deduct any qualified environmental remediation expenditure ("QER expenditure").

SECTION 2. BACKGROUND

.01 Section 198(a), as added by § 941(a) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (Aug. 5, 1997), provides that a taxpayer may elect to treat any QER expenditure as an expense that is not chargeable to the capital account, but is deductible for the taxable year in which it is paid or incurred.

.02 Section 198(b)(1) generally defines a "qualified environmental remediation expenditure" as any expenditure that is otherwise chargeable to the capital account, and that is paid or incurred in connection with the abatement or control of hazardous substances as a qualified contaminated site. However, under §

198(b)(2) a QER expenditure does not include any expenditure for property subject to an allowance for depreciation, except that the portion of the allowance for depreciation of such property that is otherwise allocated to a qualified contaminated site is treated as a QER expenditure.

.03 Section 198(c)(1)(A) defines a "qualified contaminated site" as any area:

(i) that is held by the taxpayer for use in a trade or business or for the production of income, or that is property described in § 1221(1) in the hands of the taxpayer;

(ii) that is within a targeted area (as defined in § 198(c)(2)); and

(iii) at or on which there has been a release (or threat of release) or disposal of any hazardous substance.

Section 198(c)(1)(B) provides that an area is treated as a qualified contaminated site with respect to expenditures paid or incurred during any taxable year only if the taxpayer receives a statement from an appropriate agency of the state (as defined by § 198(c)(1)(C)) in which the area is located, verifying that the area meets the requirements of § 198(c)(1)(A)(ii) and (iii) (described above).

.04 Section 198(d)(1) generally defines "hazardous substance" as any substance that is a hazardous substance as defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and any

substance that is designated as a hazardous substance under § 102 of CERCLA.

.05 Section 198 is effective for expenditures paid or incurred after August 5, 1997, and on or before December 31, 2000. See § 198(h).

SECTION 3. PROCEDURE

.01 Time for Making the Election.

Except as provided in section 3.02(3) of this revenue procedure, a § 198 election must be made on or before the due date (including extensions) for filing the income tax return for the taxable year in which the QER expenditures are paid or incurred.

.02 Manner of Making the Election.

(1) Individuals. Individuals must include the total amount of § 198 expenses on the line for "Other Expenses" on Schedule C, E, or F (as appropriate) for Form 1040, U.S. Individual Income Tax Return. Wherever the schedule requires that the taxpayer separately identify each expense included in "Other Expenses," the taxpayer must write "Section 198 Election" on the line on which the § 198 expense amounts separately appear.

(2) All other entities. Persons other than individuals (including S corporations, partnerships, and trusts) must include the total amount of § 198 expenses on the line for "Other Deductions" (or the equivalent thereof) on their appropriate federal income tax return. On a schedule attached to the return that separately identifies each expense included in "Other

Deductions" (or the equivalent thereof), the taxpayer must write "Section 198 Election" on the line on which the § 198 expense amounts separately appear.

(3) Transition rule. Taxpayers that claim a deduction for QER expenditures, paid or incurred after August 5, 1997, on a return filed on or before October 14, 1998, will be deemed to have made a § 198 election with respect to those expenditures, even if no reference to § 198 is contained on the return. If a taxpayer did not claim a deduction for such QER expenditures on such return, the taxpayer may make the § 198 election for those expenditures for the taxable year covered by the return only by filing an amended return (within the applicable period of limitations) that complies with section 3.02(1) and (2) of this revenue procedure.

.03 Scope of Election.

If, for any taxable year, the taxpayer pays or incurs more than one QER expenditure, the taxpayer may make a § 198 election for any one or more of such expenditures for that year. Thus, the taxpayer may make a § 198 election with respect to a QER expenditure even though the taxpayer chooses to capitalize other such expenditures (whether or not they are of the same type or paid or incurred with respect to the same qualified contaminated site). A § 198 election for one year has no effect for other years. Thus, a taxpayer must make a § 198 election for each year in which the taxpayer intends to deduct QER expenditures.

.04 Revocation.

A § 198 election is revocable only with the prior written consent of the Commissioner. To obtain the Commissioner's consent, a taxpayer must submit a request for a private letter ruling in accordance with the provisions of Rev. Proc. 98-1, 1998-1 I.R.B. 7 (or its successor). The taxpayer may submit a request for revocation for any taxable year for which the period of limitations for filing a claim for credit or refund of overpayment of tax has not expired.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective for QER expenditures paid or incurred after August 5, 1997.

DRAFTING INFORMATION

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