

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1****[REG–132766–18]****RIN 1545–BP53****Small Business Taxpayer Exceptions Under Sections 263A, 448, 460 and 471****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations to implement legislative changes to sections 263A, 448, 460, and 471 of the Internal Revenue Code (Code) that simplify the application of those tax accounting provisions for certain businesses having average annual gross receipts that do not exceed \$25,000,000, adjusted for inflation. This document also contains proposed regulations regarding certain special accounting rules for long-term contracts under section 460 to implement legislative changes applicable to corporate taxpayers. The proposed regulations generally affect taxpayers with average annual gross receipts of not more than \$25 million (adjusted for inflation). Additionally, this document contains a request for comments regarding the application of section 460 (or other special methods of accounting) to a contract with income that is accounted for in part under section 460 (or other special method) and in part under section 451.

**DATES:** Written or electronic comments or a request for a public hearing must be received by September 14, 2020.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG–132766–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

*Send paper submissions to:*  
CC:PA:LPD:PR (REG–132766–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:**

Concerning proposed §§ 1.460–1 through 1.460–6, Innessa Glazman, (202) 317–7006; concerning all other proposed regulations in this document, Anna Gleysteen, (202) 317–7007; concerning submission of comments and/or requests for a public hearing, Regina Johnson, (202) 317–5177 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to implement statutory amendments to sections 263A, 448, 460, and 471 of the Code made by section 13102 of Public Law 115–97 (131 Stat. 2054), commonly referred to as the Tax Cuts and Jobs Act (TCJA). These statutory amendments generally simplify the application of the method of accounting rules under those provisions to certain businesses (other than tax shelters) with average annual gross receipts that do not exceed \$25,000,000, adjusted for inflation.

This document also contains proposed amendments to the existing regulations under section 460 regarding the special accounting rules for long-term contracts to implement amendments to the Code applicable to corporate taxpayers made by TCJA sections 12001 (repealing the corporate alternative minimum tax imposed by section 55) and 14401 (adding the base erosion anti-abuse tax imposed by new section 59A).

On August 20, 2018, the Treasury Department and the IRS issued Revenue Procedure 2018–40 (2018–34 I.R.B. 320), which provided administrative procedures for a taxpayer (other than a tax shelter under section 448(d)(3)) meeting the requirements of section 448(c) to obtain consent to change the taxpayer's method of accounting to a method of accounting permitted by section 263A, 448, 460, or 471, as amended by the TCJA under the automatic change procedures of Revenue Procedure 2015–13 (2015–5 I.R.B. 419), as clarified and modified by Revenue Procedure 2015–33 (2015–24 I.R.B. 1067), as modified by Revenue Procedure 2016–1 (2016–1 I.R.B. 1), and Revenue Procedure 2017–59 (2017–48 I.R.B. 543). The revenue procedure also invited comments for future guidance regarding the implementation of the TCJA modifications to sections 263A,

448, 460, and 471. Two comments were received in response to Revenue Procedure 2018–40 and are discussed in the Explanation of Provisions.

Finally, part 5 of the Explanation of Provisions requests comments regarding the effects of section 451(b) on the application of section 460, 467, or another special method of accounting, within the meaning of section 451(b)(2). On September 9, 2019, the Treasury Department and the IRS published proposed regulations under section 451(b) (REG–104870–18) in the **Federal Register** (84 FR 47191) in which comments were requested on the allocation of the transaction price for contracts that include items of income subject to section 451 and items of income that are attributable to long-term contract activities subject to section 460. One comment was received in response to this request, but was outside the scope of the rulemaking as it was received after the expiration of the comment period for REG–104870–18. As discussed in part 5 of the Explanation of Provisions, the Treasury Department and the IRS have considered that comment in requesting additional comments regarding the application of sections 451(b)(2) and 451(b)(4) to a contract with income that is accounted for in part under section 451 and in part under section 460, 467, or another special method of accounting.

**Explanation of Provisions**

These proposed regulations provide guidance under sections 263A, 448, 460, and 471 to implement the TCJA's amendments to those provisions. These proposed regulations also modify §§ 1.381(c)(5)–1 and 1.446–1 to reflect these statutory amendments.

**1. Section 263A Small Business Taxpayer Exemption**

The uniform capitalization (UNICAP) rules of section 263A provide that, in general, the direct costs and the properly allocable share of the indirect costs of real or tangible personal property produced, or real or personal property described in section 1221(a)(1) acquired for resale, cannot be deducted but must either be capitalized into the basis of the property or included in inventory costs, as applicable. Certain property is exempted from the capitalization requirements of section 263A. For example, section 263(A)(c)(4) provides an exemption to the capitalization requirements of section 263A for any property produced by a taxpayer pursuant to a long-term contract.

In addition, certain taxpayers are exempt from the capitalization requirements. Prior to the enactment of the TCJA, section 263A(b)(2)(B) and § 1.263A-3(b)(1) provided that resellers with average annual gross receipts of \$10,000,000 or less were not subject to the capitalization requirements (Section 263A small business reseller exemption). Section 13102(b) of the TCJA replaced the Section 263A small reseller exemption with a new general exemption from section 263A under new section 263A(i) for small business taxpayers (Section 263A small business taxpayer exemption). The Section 263A small business taxpayer exemption applies to any taxpayer (other than a tax shelter under section 448(a)(3)), meeting the gross receipts test of section 448(c), as amended by section 13102(a) of the TCJA and explained in greater detail in part 2 of this Explanation of Provisions (Section 448(c) gross receipts test).

The proposed regulations remove the now obsolete Section 263A small reseller exemption provided in existing § 1.263A-3(a)(2)(ii) and (b). These proposed regulations also modify existing §§ 1.263A-1, 1.263A-2, 1.263A-3, 1.263A-4, 1.263A-7, and 1.263A-8 to incorporate the Section 263A small business taxpayer exemption.

#### A. Application of Section 448(c) Gross Receipts Test to Taxpayers That Are Not Corporations or Partnerships

For purposes of the Section 263A small business taxpayer exemption, section 263A(i)(2) provides that the Section 448(c) gross receipts test is applied in the same manner as if each trade or business of the taxpayer were a corporation or partnership. Proposed § 1.263A-1(j)(2)(ii) provides that in the case of a taxpayer other than a corporation or partnership, the Section 448(c) gross receipts test is applied by taking into account the amount of gross receipts derived from all trades or businesses of that taxpayer. Under the proposed regulations, amounts not related to a trade or business of that taxpayer, such as inherently personal amounts of an individual taxpayer, are generally excluded from gross receipts. Such excluded amounts include, in the case of an individual, items such as Social Security benefits, personal injury awards and settlements, disability benefits, and wages received as an employee that are reported on Form W-2. The exclusion for wages does not extend to guaranteed payments, which are not generally equivalent to salaries and wages. See Revenue Ruling 69-184 (1969-1 CB 45). These proposed regulations implementing the Section

263A small business taxpayer exemption are consistent with the proposed regulations implementing the Section 460 small business taxpayer exemption and Section 471 small business taxpayer exemption discussed later in this Explanation of Provisions, which incorporate statutory language similar to that in section 263A(i).

A commenter responding to Revenue Procedure 2018-40 requested clarification on the application of the Section 448(c) gross receipts test to individuals, noting that it was unclear whether the individual owner is required to include the owner's share of gross receipts from pass-through entities in the individual's gross receipts. The commenter noted that including such amounts in the individual's gross receipts would be distortive to the individual's other trades or business reported on Schedules C, *Profit or Loss From Business*, Schedule E, *Supplemental Income and Loss*, and Schedule F, *Profit or Loss From Farming*, of the Form 1040, *U.S. Individual Income Tax Return*.

The Treasury Department and the IRS note that section 263A(i) refers to section 448(c), and section 448(c)(2) expressly requires the aggregation rules of sections 52(a) or (b) and 414(m) or (o) to apply. Thus, the aggregation rules under section 52(a) or (b) or section 414(m) or (o) will always apply in connection with applying section 263A(i)(2). Under section 52, an individual taxpayer with two or more trades or businesses reported on the individual's Schedule C or Schedule E of the individual's Form 1040 is required to aggregate the gross receipts of those trades or businesses. Proposed § 1.263A-1(j)(2)(ii) is consistent with these rules. Additionally, under section 263A(i)(2), each trade or business of the taxpayer is treated as if it were a corporation or partnership, and it is well-established under § 1.448-1T(f) that a corporation or partnership includes in its gross receipts all receipts that are properly recognized under that corporation's or partnership's accounting method in that taxable year, regardless of the source of the receipts. Since corporations and partnerships do not have inherently personal items, the exclusion of such items from the individual's trade or business gross receipts is not inconsistent with § 1.448-1T(f)(2)(iv).

Consistent with section 263A(i), proposed § 1.263A-1(j)(2)(iii) provides that when determining whether a taxpayer qualifies for the Section 263A small business taxpayer exemption, each partner in a partnership includes a share of partnership gross receipts in

proportion to such partner's distributive share of items of gross income that were taken into account by the partnership under section 703; similarly, each shareholder in an S corporation includes a *pro rata* share of the S corporation's gross receipts taken into account by the S corporation under section 1363(b).

#### B. Removal of Small Reseller Exception

Prior to the TCJA, the Section 263A small reseller exception in section 263A(b)(2)(B) exempted from section 263A resellers with gross receipts of \$10 million or less (small reseller gross receipts test). The TCJA removed the Section 263A small reseller exception provided in section 263A(b)(2)(B).

Consistent with the TCJA, these proposed regulations remove existing § 1.263A-3(a)(2)(ii) and modify existing § 1.263A-3(b) by removing the small reseller gross receipts test. The Treasury Department and the IRS expect that most taxpayers who previously satisfied the small reseller gross receipts test will meet the Section 448(c) gross receipts test due to the increased dollar threshold in section 448(c), and therefore would be eligible to apply the small business taxpayer exemption under section 263A(i).

The definition of gross receipts used for the small reseller gross receipts test under existing § 1.263A-3(b) is applied for purposes of other simplifying conventions under the existing section 263A regulations. Since the TCJA removed the small reseller gross receipts test and added the Section 263A small business taxpayer exemption that refers to section 448(c), these proposed regulations update those simplifying conventions by cross referencing to the definition of gross receipts set forth in the proposed regulations under section 448 where applicable.

Specifically, proposed § 1.263A-3(a)(5) modifies the definition of gross receipts that is used to determine whether a reseller has *de minimis* production activities and proposed § 1.263A-1(d)(3)(ii)(B)(1) modifies the definition of gross receipts used to permit certain taxpayers to use the simplified production method under § 1.263A-2(b) by cross referencing to the definition of "gross receipts" for purposes of the Section 448(c) gross receipts test.

#### C. Changes to the Uniform Interest Capitalization Rules

Prior to the TCJA, section 263A(f)(1) required the capitalization of interest if the taxpayer produced certain types of property (designated property). The Section 263A small business taxpayer

exception applies for all purposes of section 263A, including the requirement to capitalize interest under section 263A(f). Accordingly, these proposed regulations modify § 1.263A-7 and § 1.263A-8 to add new paragraphs to implement the Section 263A(i) small business taxpayer exemption for purposes of the requirement to capitalize interest.

Additionally, existing § 1.263A-9 contains an election that permits taxpayers whose average annual gross receipts do not exceed \$10 million to use the highest applicable Federal rate as a substitute for the weighted average interest rate when tracing debt. Again, the Section 263A small business taxpayer exception applies for all purposes of section 263A, including the election for small business taxpayers who choose to capitalize interest under section 263A(f). Therefore, these proposed regulations modify § 1.263A-9 to remove the \$10 million gross receipts test in the definition of eligible taxpayer and replace it with the Section 448(c) gross receipts test. The Treasury Department and the IRS have determined that the use of a single gross receipts test under the section 263A (other than the pre-existing higher \$50 million threshold for testing eligibility to apply the simplified production method) simplifies application of the UNICAP rules for taxpayers.

#### D. Changes to § 1.263A-4 for Farming Trades or Businesses

Prior to the TCJA, section 263A(d)(3) permitted certain taxpayers to elect not to have the rules of section 263A apply to certain plants produced in a farming business conducted by the taxpayer. An electing taxpayer and any related person, as defined in § 1.263A-4(d)(4)(iii), are required to apply the alternative depreciation system, as defined in section 168(g)(2), to property used in the taxpayer's and any related persons' farming business and placed in service in the taxable years in which the election was in effect.

The Treasury Department and the IRS are aware that taxpayers that made an election under section 263A(d)(3) may also qualify for the Section 263A small business taxpayer exemption, and may prefer to apply that exemption rather than the election under section 263A(d)(3). Proposed § 1.263A-4(d)(5) permits a taxpayer to revoke its section 263A(d)(3) election for any taxable year in which the taxpayer is eligible for and wants to apply the Section 263A small business taxpayer exemption by following applicable administrative guidance, such as Revenue Procedure 2020-13 (2020-11 IRB 515). In addition,

some taxpayers may be eligible to apply the election under section 263A(d)(3) in a taxable year in which they cease to qualify for the Section 263A small business taxpayer exemption. Therefore, proposed § 1.263A-4(d)(6) permits such a taxpayer to change its method of accounting from the exemption under section 263A(i) by making a section 263A(d)(3) election in the same taxable year by following applicable administrative guidance, such as Revenue Procedure 2020-13.

Proposed § 1.263A-4(d)(3)(i) is modified to remove the requirement that the election under section 263A(d)(3) by a partnership or S corporation be made by the partner, shareholder or member. The Treasury Department and the IRS believe that the inclusion of this requirement was a drafting error, as sections 703(b) and 1363(c) require the election to be made at the entity level.

The TCJA added new section 263A(d)(2)(C), which provides a special temporary rule for citrus plants lost by reason of casualty. The provision, which expires in 2027, provides that section 263A does not apply to replanting costs paid or incurred by a taxpayer other than the owner if certain conditions are met. Proposed § 1.263A-4(e)(5) is added to incorporate this special temporary rule.

#### E. Costing Rules for Self-Constructed Assets

One commenter stated that the costing rules for self-constructed property used in a taxpayer's trade or business prior to the enactment of section 263A, which would apply to small business taxpayers choosing to apply the Section 263A small business taxpayer exemption, are not clear. The commenter asked for clarification of what costs a small business taxpayer is required to capitalize to its depreciable property if the taxpayer has chosen to apply the Section 263A small business taxpayer exemption. The Treasury Department and the IRS request further comments on specific clarifications needed regarding the costing rules that existed prior to the enactment of the UNICAP rules under section 263A.

#### 2. Changes to the Regulations Under Section 448

Section 448(a) generally prohibits C corporations, partnerships with a C corporation as a partner, and tax shelters from using the cash receipts and disbursements method of accounting (cash method). However, section 448(b)(3) provides that section 448(a) does not apply to C corporations and partnerships with a C corporation as a partner that meet the Section 448(c)

gross receipts test. Prior to the TCJA's enactment, a taxpayer met the gross receipts test of section 448(c) if, for all taxable years preceding the current taxable year, the average annual gross receipts of the taxpayer (or any predecessor) for any 3-taxable-year period did not exceed \$5 million. If a taxpayer had not been in existence for the entire 3-taxable-year period, then the gross receipt test was applied on the basis of the period during which the taxpayer or trade or business was in existence. For a taxable year less than 12 months, the gross receipts of that short taxable year were annualized (short taxable year rule). Additionally, this gross receipts test also required the aggregation of gross receipts for all persons treated as a single employer under section 52(a) or (b) or section 414(m) or (o) (aggregation rule).

Section 13102(a) of the TCJA amended the Section 448(c) gross receipts test to permit a taxpayer (other than a tax shelter) to meet the test if the taxpayer's average annual gross receipts for the 3-taxable-year period ending with the year preceding the current taxable year does not exceed \$25 million and indexed the \$25 million threshold for inflation (Section 448 small business taxpayer exemption). Other rules in section 448(c), such as the short taxable year rule and the aggregation rule, were not altered by section 13102(a) of the TCJA.

#### A. General Rules of Section 448(c) and Section 448(c) Gross Receipts Test

These proposed regulations modify existing § 1.448-1 to clarify that it applies to taxable years beginning before January 1, 2018 for purposes of applying the restrictions on the use of the cash method by C corporations and partnerships with C corporation partners. Proposed § 1.448-2 provides rules applicable for taxable years beginning after December 31, 2017. These rules are generally similar to the existing regulations under § 1.448-1 and § 1.448-1T of the Temporary Income Tax Regulations, including the short taxable year rule and the aggregation rule. However, for taxable years beginning after December 31, 2017, the proposed regulations update the rules to reflect the post-TCJA Section 448(c) gross receipts test. These proposed regulations also clarify that the gross receipts of a C corporation partner are included in the gross receipts of a partnership if the aggregation rules apply to the C corporation partner and the partnership.

The Treasury Department and the IRS publish an annual revenue procedure for inflation-adjusted amounts and

intend to include the inflation-adjusted section 448(c) dollar threshold in that revenue procedure. See, for example, Revenue Procedure 2019–44 (2019–47 IRB 1093).

#### B. Tax Shelters Defined in Section 448(d)(3)

Under section 448(a)(3), a tax shelter is prohibited from using the cash method. Section 448(d)(3) cross references section 461(i)(3) to define the term “tax shelter.” Section 461(i)(3)(B), in turn, includes a cross reference to the definition of “syndicate” in section 1256(e)(3)(B), which defines a syndicate as a partnership or other entity (other than a C corporation) if more than 35 percent of the losses of that entity during the taxable year are *allocable* to limited partners or limited entrepreneurs. Section 1.448–1T(b)(3) narrowed this definition by providing that a taxpayer is a syndicate only if more than 35 percent of its losses are *allocated* to limited partners or limited entrepreneurs. Consequently, a partnership or other entity (other than a C corporation) may be considered a syndicate only for a taxable year in which it has losses. These proposed regulations adopt the same definition of syndicate provided in § 1.448–1T.

One commenter expressed concern that the definition of syndicate is difficult to administer because many small business taxpayers may fluctuate between taxable income and loss between taxable years, thus their status as tax shelters may change each tax year. The commenter suggested that the Treasury Department and the IRS exercise regulatory authority under section 1256(e)(3)(C)(v) to provide that all the interests held in entities that meet the definition of a syndicate but otherwise meet the Section 448(c) gross receipts test be deemed as held by individuals who actively participate in the management of the entity, so long as the entities do not qualify to make an election as an electing real property business or electing farm business under section 163(j)(7)(B) or (C), respectively. The Treasury Department and the IRS decline to adopt this recommendation. The recommendation would allow a taxpayer that meets the Section 448(c) gross receipts test to completely bypass the “syndicate” portion of the tax shelter definition under section 448(d)(3). Neither the statutory language of section 448 nor the legislative history of the TCJA support limiting the application of the existing definition of tax shelter in section 448(d)(3) in this manner.

The Treasury Department and the IRS are aware of practical concerns

regarding the determination of tax shelter status for the taxable year. For example, a taxpayer may determine computationally that it is a syndicate under section 1256 after the close of the taxable year while preparing its Federal income tax return for the taxable year. However, a taxpayer that is a tax shelter is not permitted to use the cash method for that taxable year, but may no longer be able to timely file a Form 3115, *Application for Change in Accounting Method*, to change from the cash method to an appropriate method, such as an accrual method of accounting (accrual method) for that taxable year, or it may otherwise have time constraints in filing its Federal income tax return by the due date of the return (without extensions) for such taxable year. While these procedural constraints also existed prior to the TCJA, the TCJA’s modifications to several other sections of the Code to reference the section 448(d)(3) definition of tax shelter made the tax shelter status determination under section 448(c)(3) applicable to more taxpayers than prior to the TCJA, increasing the number of taxpayers affected by these procedural constraints.

In light of the increased relevance of the definition of tax shelter under section 448(d)(3) after enactment of the TCJA, proposed § 1.448–2(b)(2)(iii)(B) permits a taxpayer to elect to use the allocated taxable income or loss of the immediately preceding taxable year to determine whether the taxpayer is a syndicate for purposes of section 448(d)(3) for the current taxable year. A taxpayer that makes this election will know at the beginning of the taxable year whether it is a tax shelter for the current taxable year, alleviating concerns about the difficulties in timely determining whether it is a tax shelter under section 448(d)(3) and filing changes in method of accounting, if necessary. A taxpayer that makes this election must apply the rule to all subsequent taxable years, and for all purposes for which status as a tax shelter under section 448(d)(3) is relevant, unless the Commissioner permits a revocation of the election.

Another commenter suggested a rule to provide relief to taxpayers that report negative taxable income in a taxable year solely because of a negative section 481(a) adjustment arising from an accounting method change and are consequently within the definition of tax shelter under section 448(d)(3), but that would otherwise meet the Section 448(c) gross receipts test. The suggested rule would deem such taxpayers to not be tax shelters for purposes of section 448(d)(3). The Treasury Department and the IRS decline to adopt this suggestion.

No exception was provided in the TCJA to limit the application of the definition of tax shelter in section 448(d)(3) for taxpayers making an overall method change.

The Treasury Department and the IRS continue to study the definition of tax shelter under section 448(d)(3) and request comments on whether additional relief is necessary.

#### C. Procedures for Taxpayers Required To Change From the Cash Method

Prior to its amendment by the TCJA, a taxpayer met the gross receipts test of section 448(c) if its average annual gross receipts did not exceed \$5 million for all prior 3-taxable-year periods. Once a taxpayer’s average annual gross receipts had exceeded \$5 million (first section 448 year), a taxpayer was prohibited under section 448 from using the cash method for all subsequent taxable years.

The TCJA removed the requirement under section 448(c) that all prior taxable years of a taxpayer must satisfy the Section 448(c) gross receipts test for the taxpayer to qualify for the cash method for taxable years beginning after December 31, 2017. Thus, section 448 no longer permanently prevents a C corporation or a partnership with a C corporation partner from using the cash method for a year subsequent to a taxable year in which its gross receipts first exceed the dollar threshold for the Section 448(c) gross receipts test. Accordingly, the proposed regulations do not require taxpayers to meet the gross receipts test for all prior taxable years in order to satisfy the Section 448(c) gross receipts test.

The term “first section 448 year” used in existing § 1.448–1 no longer reflects the statutory language of section 448 and these proposed regulations remove this term for taxable years beginning after December 31, 2017. Proposed § 1.448–2(g)(1) uses the term “mandatory section 448 year” to describe the first taxable year that a taxpayer is prevented by section 448 from using the cash method, or a subsequent taxable year in which the taxpayer is again prevented by section 448 from using the cash method after previously making a change in method of accounting that complied with section 448.

Proposed § 1.448–2(g)(3) requires a taxpayer that meets the Section 448(c) gross receipts test in the current taxable year to obtain the written consent of the Commissioner before changing to the cash method if the taxpayer had previously changed its overall method from the cash method during any of the five taxable years ending with the current taxable year. A taxpayer that

makes multiple changes in its overall method of accounting within a short period of time may not be treating items of income and expense consistently from year to year, and a change back to the cash method within the five year period may not clearly reflect income, as required by § 1.446-1(a)(2), even if section 448 otherwise does not prohibit the use of the cash method.

The proposed regulations also do not contain specific procedures to make a method change from the cash method to a permissible method. The Treasury Department and the IRS have determined that providing a single procedure in administrative guidance, such as Revenue Procedure 2015-13 (or successor) and Revenue Procedure 2019-43 (2019-48 IRB 1107) (or successor) will reduce confusion for taxpayers to make voluntary changes in method of accounting to comply with section 448. Consequently, the proposed regulations provide that a taxpayer in a mandatory section 448 year must follow the applicable administrative procedures to change from the cash method to a permissible method.

### 3. Changes to the Regulations Under Section 460

Section 460(a) provides that income from a long-term contract must be determined using the percentage-of-completion method (PCM). A long-term contract is defined in section 460(f) as generally any contract for the manufacture, building, installation, or construction of property if such contract is not completed within the taxable year in which such contract is entered into. Subject to special rules in section 460(b)(3), section 460(b)(1)(A) generally provides that the percentage of completion of a long-term contract is determined by comparing costs allocated to the contract under section 460(c) and incurred before the close of the taxable year with the estimated total contract costs. Section 460(b)(1)(B) generally provides that a taxpayer is required to pay or is entitled to receive interest determined under the look-back rules of section 460(b)(2) on the amount of any tax liability under chapter 1 of the Code that was deferred or accelerated as a result of overestimating or underestimating total allocable contract costs or contract price with respect to income from long-term contracts reported under the PCM. Section 56(a)(3) generally provides that for alternative minimum tax (AMT) purposes, the taxable income from a long-term contract (other than a home construction contract defined in section 460(e)(5)(A)) is determined under the PCM (as modified by section 460(b)).

Section 460(e)(1)(A) provides an exemption from the requirement to use the PCM for home construction contracts. Prior to the TCJA, section 460(e)(1)(B) provided a separate exemption from the PCM for a long-term construction contract of a taxpayer who estimated that the contract would be completed within the 2-year period from the commencement of the contract (two-year rule), and whose average annual gross receipts for the 3-taxable-year period ending with the year preceding the year the contract was entered into did not exceed \$10 million (Section 460(e) gross receipts test). The flush language of section 460(e)(1) provides that a home construction contract with respect to which the two-year rule and Section 460(e) gross receipts test are not met will be subject to section 263A, notwithstanding the general exemption under section 263A(c)(4) for property produced pursuant to a long-term contract (large homebuilder rule). Additionally, for AMT purposes, section 56(a)(3) provides in the case of contract described in section 460(e)(1), other than a home construction contract, the percentage of the contract completed is determined under section 460(b)(1) by using the simplified procedures for allocation of costs prescribed under section 460(b)(3).

Section 13102(d) of the TCJA amended section 460(e)(1)(B) by removing the Section 460(e) gross receipts test and replacing it with the Section 448(c) gross receipts test, as amended by section 13102(a) of the TCJA, for the taxable year in which the contract is entered into. Thus, section 460(e)(1)(B), as modified by TCJA, provides a small contractor exemption for long-term construction contracts of a taxpayer other than a tax shelter that estimates that the contract will be completed within two years of the commencement of the contract and meets the Section 448(c) gross receipts test (Section 460 small contractor exemption). The Section 460 small contractor exemption does not apply to home construction contracts, which remain exempt from required use of PCM under section 460(e)(1)(A).

#### A. Application of the Section 448(c) Gross Receipts Test and Rules Applicable to Taxpayers Other Than a Corporation or Partnership

Proposed § 1.460-3(b) modifies the rules relating to the small contractor exemption by incorporating the requirement in section 460(e)(1)(B)(ii) that an eligible taxpayer must meet the Section 448(c) gross receipts test for the

taxable year in which the contract is entered into.

Section 460(e)(2), which has statutory language identical to that in section 263A(i)(2), provides that for a taxpayer that is not a corporation or partnership, the Section 448(c) gross receipts test is applied in the same manner as if each trade or business of the taxpayer were a corporation or a partnership. Proposed § 1.460-3(b)(3)(ii)(A) through (D) provide guidance under section 460(e)(2) consistent with the rules in proposed § 1.263A-1(j)(2).

#### B. Home Construction Contract Rules

The large homebuilder rule under section 460(e)(1) exempts home construction contracts from PCM but requires capitalization of costs under the UNICAP rules under section 263A. Consistent with section 460(e)(1), proposed § 1.460-5(d)(3) provides that a taxpayer must capitalize the costs of home construction contracts under section 263A and the regulations under section 263A, unless the taxpayer estimates, when entering into the contract, that it will be completed within two years of the contract commencement date and the taxpayer satisfies the Section 448(c) gross receipts test for the taxable year in which the contract is entered into.

#### C. Clarification of Method of Accounting Rules

Section 460(e)(2)(B) provides that any change in method of accounting made pursuant to section 460(e)(1)(B)(ii) is treated as initiated by the taxpayer and made with the consent of the Secretary of the Treasury or his delegate (Secretary). The change is made on a cut-off basis for all similarly classified contracts entered into on or after the year of change.

Revenue Ruling 92-28 (92-1 CB 153) held that within the same trade or business, a taxpayer may use different methods of accounting for contracts exempt under section 460(e)(1) and contracts subject to mandatory use of PCM under section 460(a). Accordingly, a taxpayer with both exempt contracts and nonexempt contracts within the same trade or business may use a method of accounting other than PCM for all exempt contracts, even though the taxpayer would be required to use PCM for the nonexempt contracts.

A commenter requested clarification on the interaction of Revenue Ruling 92-28 with section 460(e)(2)(B). The commenter asked for clarification because Revenue Ruling 92-28 describes situations in which a taxpayer is not required to obtain consent to a change in method of accounting because

it is either adopting a method of accounting for a new item (Situation 1: PCM for nonexempt long-term contracts) or returning to the use of a previously adopted method (Situation 2: completed contract method for contracts exempt because taxpayer's average annual gross receipts have fallen below the threshold for the small contractor exemption).

The Treasury Department and the IRS have determined that the holding in Revenue Ruling 92–28 remains correct, and that section 460(e)(2)(B) does not apply to Situations 1 and 2 in Revenue Ruling 92–28. In reconciling the statutory language of section 460(e)(2)(B) with section 446, the Treasury Department and the IRS interpret section 460(e)(2)(B) as applying to situations in which a taxpayer has been using PCM for exempt contracts and would like to change to a different exempt contract method. Accordingly, proposed § 1.460–1(f)(3) incorporates the holding of Revenue Ruling 92–28 and provides that a taxpayer may adopt any permissible method of accounting for each classification of contract (that is, exempt and nonexempt).

#### D. Look-Back Rules

Section 460(b) provides that, upon the completion of any long-term contract, the look-back method is applied to amounts reported under the contract using PCM, whether for regular income tax purposes or for AMT purposes. Under the look-back method, taxpayers are required to pay interest if the taxpayer's Federal income tax liability is deferred as a result of underestimating the total contract price or overestimating total contract costs. Alternatively, a taxpayer is entitled to receive interest if the taxpayer's Federal income tax liability has been accelerated as a result of overestimating the total contract price or underestimating total contract costs. Any interest to be paid is based on a comparison of the difference between the Federal income tax liability actually reported by the taxpayer compared to the Federal income tax liability that would have been reported if the taxpayer had used actual contract prices and costs instead of estimated contract prices and costs in computing income under PCM.

##### i. Look-Back Rules and AMT

Section 12001 of the TCJA amended section 55(a) so that the AMT is no longer imposed on corporations for taxable years beginning after December 31, 2017. Consistent with section 12001 of the TCJA, proposed § 1.460–6(c) reflects the changes to section 55(a) by

providing that in applying the look-back method, alternative minimum taxable income is redetermined only for taxable years in which the AMT is applicable. Similarly, the recomputed tax liability for prior contract years includes the AMT only for the taxable years in which the AMT is applicable. Consequently, for taxable years beginning after December 31, 2017, for purposes of the look-back method, a corporation will not redetermine alternative minimum taxable income or recompute AMT liability. However, a corporation that has a contract that spans a period beginning before the TCJA (taxable years beginning before January 1, 2018) and ending after the TCJA (taxable years beginning after December 31, 2017), would be required to redetermine alternative minimum taxable income and recompute AMT for those taxable years beginning before January 1, 2018.

##### ii. De Minimis Exception to Look-Back Rules

Section 460(b)(3) provides an exception to the requirement to apply the look-back method. Under the exception, the look-back method need not be applied if the contract price does not exceed the lesser of \$1,000,000 or one percent of the taxpayer's average annual gross receipts for the prior 3-taxable-year period ending with the year preceding the taxable year in which the contract is completed, and the contract is completed within two years of the commencement of the contract. Proposed § 1.460–3(b)(3) provides that, for purposes of this *de minimis* exception, gross receipts are determined in accordance with the regulations under section 448(c).

##### iii. Look-Back Rules and the BEAT

Proposed § 1.460–6 is also updated to reflect the enactment of the base erosion anti-abuse tax (BEAT) imposed by section 59A. For any taxable year, the BEAT is a tax on each applicable taxpayer (see § 1.59A–2) equal to the base erosion minimum tax amount (BEMTA) for that year. Generally, the taxpayer's BEMTA equals the excess of (1) the applicable tax rate for the taxable year (BEAT rate) multiplied by the taxpayer's modified taxable income under § 1.59A–3(b) for the taxable year over (2) the taxpayer's adjusted regular Federal income tax liability for that year.

Proposed § 1.460–6 applies the look-back method to re-determine the taxpayer's modified taxable income under § 1.59–3(b) and the taxpayer's BEMTA for the taxable year. Specifically, the taxpayer must determine its modified taxable income

and BEMTA for each year prior to the filing year that is affected by contracts completed or adjusted in the filing year as if the actual total contract price and costs had been used in applying the percentage of completion method.

The Treasury Department and the IRS have proposed this rule because the income from long-term contracts determined using the PCM may be overestimated or underestimated, which may change the taxpayer's modified taxable income or BEMTA, or whether or not a taxpayer is an applicable taxpayer in a particular taxable year. Clarifying in the regulations under section 460 that the look-back method must take into account any application of the BEAT makes clear that section 460 provides taxpayers will pay or receive interest (whichever is the case) if their Federal income tax liability, including any BEAT liability, is deferred, eliminated, understated, or overstated as a result of the taxpayer's estimation of the total contract price or total contract costs.

#### 4. Section 471 Small Business Taxpayer Exemption

Section 471(a) requires inventories to be taken by a taxpayer when, in the opinion of the Secretary, taking an inventory is necessary to determine the income of the taxpayer. Section 1.471–1 requires the taking of an inventory at the beginning and end of each taxable year in which the production, purchase, or sale of merchandise is an income-producing factor. Additionally, when an inventory is required to be taken, § 1.446–1(c)(1)(iv) and (c)(2) require that an accrual method be used for purchases and sales.

Section 13102(c) of the TCJA added new section 471(c) to remove the statutory requirement to take an inventory when the production, purchase, or sale of merchandise is an income-producing factor for a taxpayer (other than a tax shelter) meeting the Section 448(c) gross receipts test (Section 471 small business taxpayer exemption). The Section 471 small business taxpayer exemption provides that the requirements of section 471(a) do not apply to a taxpayer for that taxable year, and the taxpayer's method of accounting for inventory for such taxable year shall not be treated as failing to clearly reflect income if the taxpayer either: (1) Treats the taxpayer's inventory as non-incidental materials and supplies, or (2) conforms the taxpayer's inventory method to the taxpayer's method of accounting for inventory reflected in an applicable financial statement as defined in section 451(b)(3) (AFS), or if the taxpayer does

not have an AFS, in the taxpayer's books and records prepared in accordance with the taxpayer's accounting procedures.

Section 471(c)(3) provides that in the case of a taxpayer that is not a corporation or partnership, the Section 448(c) gross receipts test is determined in the same manner as if each trade or business of such taxpayer were a corporation or partnership.

A taxpayer's method of accounting for inventory may not clearly reflect income if a taxpayer meets the Section 448(c) gross receipts test but does not take an inventory, and also does not either treat its inventory as non-incidental materials and supplies or in conformity with its AFS, or its books and records if it does not have an AFS. In such instances, the general rules under section 446 for analyzing whether a method of accounting clearly reflects income are applicable.

These proposed regulations modify existing § 1.471–1 by adding proposed § 1.471–1(b) to implement the Section 471 small business taxpayer exemption under section 471(c). Proposed § 1.471–1(b) provides guidance on the application of the Section 448(c) gross receipts test to taxpayers other than a corporation or partnership, the treatment of inventory as non-incidental materials and supplies, and the conforming of inventory to an AFS or the taxpayer's books and records.

#### A. Application of the Section 448(c) Gross Receipts Test to Taxpayers Other Than a Corporation or Partnership

These proposed regulations provide guidance under section 471(c)(3), which has statutory language identical to section 263A(i)(2), consistent with the rules in proposed § 1.263A–1(j)(2). See part 1.A of this Explanation of Provisions for discussion of the application of the Section 448(c) gross receipts test to individuals and other taxpayers that are not a corporation or partnership.

#### B. Treatment of Inventory as Non-Incidental Materials and Supplies

Section 471(c)(1)(B)(i) provides that a taxpayer, other than a tax shelter, that meets the Section 448(c) gross receipts test can treat its inventory as non-incidental materials and supplies.

Prior to the TCJA, the Treasury Department and the IRS provided administrative relief for certain taxpayers from the requirements of section 471(a) with regard to purchases and sales of inventory. Under Revenue Procedure 2001–10 (2001–2 IRB 272), a taxpayer with average annual gross receipts that did not exceed \$1 million

was exempted from the requirements to use an accrual method under section 446 and to account for inventories under section 471. Similarly, under Revenue Procedure 2002–28 (2002–28 IRB 815), a “qualifying small business taxpayer,” as defined in section 4.01 of Revenue Procedure 2002–28, was also exempted from the requirements to use an accrual method under section 446 and to account for inventories under section 471. To qualify, a taxpayer must have had average annual gross receipts that did not exceed \$10 million in certain industries, or reasonably determined that its principal business activity was the provision of services, or reasonably determined its principal business activity was the fabrication or modification of customized tangible personal property.

Under both revenue procedures, a taxpayer was permitted to account for its inventory in the same manner as non-incidental materials and supplies under § 1.162–3. Under § 1.162–3, materials and supplies that are not incidental are deductible only in the year in which they are actually consumed and used in the taxpayer's business. For purposes of these revenue procedures, inventoriable items treated as non-incidental materials and supplies were treated as consumed and used in the taxable year the taxpayer provided the items to a customer. Thus, the costs of such inventoriable items were recovered by a cash basis taxpayer only in that year, or in the year in which the taxpayer actually paid for the goods, whichever was later. See section 4.02 of Revenue Procedure 2001–10 and section 4.05 of Revenue Procedure 2002–28.

Section 471(c)(1)(B)(i) generally codified the treatment of inventory using the non-incidental materials and supplies method of accounting described in Revenue Procedure 2001–10 and Revenue Procedure 2002–28, with certain exceptions. Accordingly, proposed § 1.471–1(b)(4) provides rules similar to the provisions of these revenue procedures, including that the items continue to be inventory property. The proposed regulations refer to inventory treated as non-incidental materials and supplies as “section 471(c) materials and supplies.”

#### i. Definition of the Term “Used and Consumed”

As explained previously and as noted in the Conference Report to the TCJA, an exception to the requirement to take an inventory was provided under Revenue Procedure 2001–10 and Revenue Procedure 2002–28. H.R. Rep. No. 115–466, at 378 fn. 638 and 639 (2017). Under that exception, a taxpayer

was able to account for inventory as materials and supplies that are not incidental. The cost of non-incidental materials and supplies is deductible in the taxable year in which the materials and supplies are first used or consumed in the taxpayer's operations. *Id.* at 378 fn. 640. As discussed in part 4.B of this Explanation of Provisions, the administrative guidance as in existence prior to the TCJA provided that inventory treated as non-incidental materials and supplies under § 1.162–3 remained inventory property, the cost of which was recovered by a cash basis taxpayer when the items were provided to a customer, or when the taxpayer paid for the items, whichever was later. The Conference Report describes the TCJA as generally permitting the costs of non-incidental materials and supplies to be recovered in the taxable year that is “consistent with present law.” *Id.* at 380 fn. 657. The Treasury Department and IRS interpret section 471(c)(1)(B)(i) as generally codifying the administrative guidance existing at the time of enactment (that is, Revenue Procedure 2001–10 and Revenue Procedure 2002–28). Accordingly, proposed § 1.471–1(b)(4)(i) provides that section 471(c) materials and supplies are used or consumed in the taxable year in which the taxpayer provides the item to a customer and the cost of such item is recovered in that year or the taxable year in which the taxpayer pays for or incurs (in the case of an accrual method taxpayer) such cost, whichever is later.

One commenter requested that raw materials used in the production of finished goods be deemed “used or consumed” when the raw material is used during production instead of when the finished product is provided to a customer. Under this approach, a producer would be able to recover production costs earlier than allowed under the administrative guidance of Revenue Procedure 2001–10 and Revenue Procedure 2002–28. Further, under this approach, a producer would be permitted to recover costs earlier than a reseller. The Treasury Department and the IRS decline to adopt this suggestion. As discussed previously, the Treasury Department and the IRS interpret section 471(c)(1)(B)(i) and its legislative history generally as codifying the rules provided in the administrative guidance existing at the time the Act was enacted. Accordingly, proposed § 1.471–1(b)(4) provides that section 471(c) materials and supplies are “used and consumed” in the taxable year the taxpayer provides the goods to a customer, and that the

cost of goods is recovered in that year or the taxable year in which such cost is paid or incurred (in accordance with the taxpayer's method of accounting), whichever is later.

ii. De Minimis Safe Harbor Under § 1.263(a)–1(f)

Section 1.263(a)–1(f) provides a regulatory *de minimis* safe harbor election through which an electing taxpayer may choose not to treat as a material or supply under § 1.162–3(a) any amount paid in the taxable year for tangible property if the amount paid meets certain requirements, and instead to deduct the *de minimis* amount in accordance with its AFS, or books and records, if the taxpayer has no AFS. Section 1.263(a)–1(f)(2)(i) provides that the *de minimis* safe harbor election does not apply to amounts paid for property that is or is intended to be included in inventory property.

Two commenters asked for clarification on whether a taxpayer using the non-incidental materials and supplies method under section 471(c)(1)(B)(i) may use the *de minimis* safe harbor election of § 1.263(a)–1(f). As discussed in part 4.B of this Explanation of Provisions, the Treasury Department and the IRS continue to interpret inventory treated as non-incidental materials and supplies as remaining characterized as inventory property. Consequently, proposed § 1.471–1(b)(4)(i) provides that inventory treated as section 471(c) non-incidental materials and supplies is not eligible for the *de minimis* safe harbor election under § 1.263(a)–1(f). Extending the regulatory election under § 1.263(a)–1(f) to encompass section 471(c) materials and supplies is outside the intended scope of the election and runs counter to section 471(c), which indicates section 471(c) materials and supplies are inventory property.

iii. Identification and Valuation of Section 471(c) Materials and Supplies

One commenter asked for guidance on how a taxpayer determines the cost basis of inventory items that are treated as non-incidental materials and supplies. Proposed § 1.471–1(b)(4)(ii) provides guidance on how a taxpayer may identify and value section 471(c) materials and supplies. These identification and valuation methods would apply whether the taxpayer used the cash method or an accrual method.

Consistent with Revenue Procedure 2002–28, and the legislative history to section 471(c), proposed § 1.471–1(b)(4)(ii) permits taxpayers to determine the amount of their section 471(c) materials and supplies by using

either a specific identification method, a first-in, first-out (FIFO) method, or an average cost method, provided that the method is used consistently. Taxpayers may not identify their inventory using a last-in, first-out (LIFO) method or value section 471(c) materials and supplies using a lower-of-cost-or-market (LCM) method. The Treasury Department and the IRS are aware that the purpose of the section 471(c) materials and supplies method is to provide simplification. Accounting methods using LIFO and LCM require sophisticated computations and are allowed under the more complex inventory rules of sections 471(a) and 472. Accordingly, these proposed regulations do not permit a taxpayer using the section 471(c) materials and supplies method to use either a LIFO method or the LCM method.

iv. Direct Labor and Overhead Costs for Section 471(c) Materials and Supplies

Commenters asked for clarification as to the treatment of direct labor and overhead costs for section 471(c) materials and supplies. Revenue Procedure 2001–10 and Revenue Procedure 2002–28 did not directly address whether direct labor and overhead costs for inventory treated as non-incidental materials and supplies were immediately deductible. The commenters argue that if inventories are treated as non-incidental materials and supplies, then all of the direct labor and overhead costs incurred in producing the goods are deductible when incurred. One commenter noted that prior to the enactment of section 263A, the costing rules for inventoriable goods produced by a taxpayer were governed by the full absorption method under § 1.471–11, and § 1.471–3, in the case of a reseller of inventory.

The Treasury Department and the IRS have determined that under the section 471(c) materials and supplies method, the items retain their character as inventory property. Because the property remains characterized as inventory property, the costing rules in § 1.471–11 and § 1.471–3 are the applicable rules to determine which costs are to be included under the section 471(c) materials and supplies method. However, the Treasury Department and the IRS are aware that the purpose of section 471(c)(1)(A)(i) is to provide simplification for taxpayers. Accordingly, these proposed regulations provide that a taxpayer using the section 471(c) materials and supplies method is required to include only direct costs paid to produce or acquire the inventory treated as section 471(c) materials and supplies. These direct costs are not

immediately deductible but are recovered in accordance with proposed § 1.471–1(b)(4). Consistent with existing law, these proposed regulations provide that a taxpayer is not permitted to recover a cost that it otherwise would be neither permitted to recover nor deduct for Federal income tax purposes solely by reason of it being included in the costs of section 471(c) materials and supplies.

C. Treatment of Inventory for an AFS Taxpayer

A taxpayer, other than a tax shelter, that meets the Section 448(c) gross receipts test need not take an inventory under section 471(a) and may choose to treat its inventory as the inventory is reflected in the taxpayer's AFS, or if the taxpayer does not have an AFS, as the inventory is treated in the taxpayer's books and records prepared in accordance with the taxpayer's accounting procedures. These proposed regulations provide guidance on the definition of AFS, the types and amounts of costs reflected in an AFS that can be recovered under section 471(c), and when such costs may be taken into account. The proposed regulations use the term "AFS section 471(c) method" to describe the permissible section 471(c)(1)(B)(ii) method for a taxpayer with an AFS (AFS taxpayer).

i. Definition of AFS

Section 471(c)(2) defines an AFS by cross-reference to section 451(b)(3). Consistent with the statute, proposed § 1.471–1(b)(5)(ii) defines the term AFS in accordance with section 451(b)(3), and incorporates the definition provided in proposed § 1.451–3(c)(1). The rules relating to additional AFS issues provided in § 1.451–3(h) also apply to the AFS section 471(c) method. The proposed regulations also provide that a taxpayer has an AFS for the taxable year if all of the taxpayer's taxable year is covered by an AFS.

If a taxpayer's AFS is prepared on the basis of a financial accounting year that differs from the taxpayer's taxable year, proposed § 1.471–1(b)(5)(ii) provides that a taxpayer determines its inventory for the mismatched reportable period by using a method of accounting described in proposed § 1.451–3(h)(4). The Treasury Department and the IRS propose to require a taxpayer with an AFS that uses the AFS section 471(c) method to consistently apply the same mismatched reportable period method provided in proposed § 1.451–3(h)(4) for purposes of its AFS section 471(c) method of accounting that is used for section 451. The Treasury Department

and the IRS request comments on the consistency requirement and other issues related to the application of proposed § 1.451–3(h) to the AFS section 471(c) method.

#### ii. Types and Amounts of Costs Reflected in an AFS

Proposed § 1.471–1(b)(5) provides rules relating to the AFS section 471(c) method, including a description of the costs included in this method. The proposed regulations provide that an AFS taxpayer, other than a tax shelter, that meets the Section 448(c) gross receipts test may use the AFS section 471(c) method to account for its inventory costs for that taxable year. The proposed regulations also clarify that a taxpayer using the AFS section 471(c) method is maintaining inventory, but generally recovers the costs of inventory in accordance with its AFS inventory method and not by using an inventory method specified under section 471(a) and the regulations under section 471.

Under the AFS section 471(c) method, the term “inventory costs” means the costs that a taxpayer capitalizes to property produced or property acquired for resale in its AFS. However, these proposed regulations clarify that the amount of an inventory cost in a taxpayer’s AFS may not properly reflect the amount recoverable under the taxpayer’s AFS section 471(c) method. These proposed regulations provide that a taxpayer is not permitted to recover a cost that it otherwise would be neither permitted to recover nor deduct for Federal income tax purposes solely by reason of it being an inventory cost in the taxpayer’s AFS inventory method. In addition, these proposed regulations provide that a taxpayer may not capitalize a cost to inventory any earlier than the taxable year in which the amount is paid or incurred under the taxpayer’s overall method of accounting for Federal income tax purposes (for example, if applicable, section 461(h) is met) or not permitted to be capitalized by another Code provision (for example, section 263(a)). As a result, a taxpayer may be required to reconcile any differences between its AFS and Federal income tax return treatment (book-tax adjustments) for all or a portion of a cost that was included in the taxpayer’s AFS inventory method under the AFS section 471(c) method.

The Treasury Department and the IRS are aware that some taxpayers may interpret section 471(c)(1)(B)(ii) as permitting a taxpayer to capitalize a cost to inventory for Federal income tax purposes when that cost is included in the taxpayer’s AFS inventory method

irrespective of: (1) Whether the amount is deductible or otherwise recoverable for Federal income tax purposes; or (2) when the amount is capitalizable under the taxpayer’s overall method of accounting used for Federal income tax purposes. The Treasury Department and the IRS do not agree with this interpretation because section 471 is a timing provision. Section 471 is in subchapter E of chapter 1, Accounting Periods and Methods of Accounting. It is not in subchapter B of chapter 1, Computation of Taxable Income. A method of accounting determines when an item of income or expense is recognized, not whether it is deductible or recoverable through cost of goods sold or basis.

Accordingly, the Treasury Department and the IRS view section 471(c)(1)(B)(ii) as an exemption from taking an inventory under section 471(a) for certain taxpayers that meet the Section 448(c) gross receipts test and not as an exemption from the application of Code provisions other than section 471(a). While Congress provided an exemption from the general inventory timing rules of section 471(a), Congress did not exempt these taxpayers from applying other Code provisions that determine the deductibility or recoverability of costs, or the timing of when costs are considered paid or incurred. For example, Congress did not modify or alter section 461 regarding when a liability is taken into account, or any of the provisions that disallow a deduction, in whole or in part, such as any disallowance under section 274, to exempt these taxpayers. Accordingly, these proposed regulations require an AFS taxpayer that uses the AFS section 471(c) method to make book-tax adjustments for costs capitalized in its AFS that are not deductible or otherwise recoverable, in whole or in part, for Federal income tax purposes or that are taken into account in a taxable year different than the year capitalized under the AFS as a result of another Code provision.

#### D. Treatment of Inventory by Taxpayers Without an AFS

Under section 471(c)(1)(B)(ii), a taxpayer, other than a tax shelter, that does not have an AFS and that meets the Section 448(c) gross receipts test is not required to take an inventory under section 471(a), and may choose to treat its inventory as reflected in the taxpayer’s books and records prepared in accordance with the taxpayer’s accounting procedures (non-AFS section 471(c) method). These proposed regulations permit a taxpayer without an AFS (non-AFS taxpayer) to follow its

method of accounting for inventory used in its books and records that properly reflect its business activities for non-Federal income tax purposes. The proposed regulations clarify that a non-AFS taxpayer using the non-AFS section 471(c) method has inventory, but recovers the costs of inventory through its book method, rather than through an inventory method under section 471(a) and the regulations under section 471.

Two comments received requested a definition of “books and records of the taxpayer prepared in accordance with the taxpayer’s accounting procedures.” The Treasury Department and the IRS decline to define books and records in these proposed regulations. It is well-established under existing law that the books and records of a taxpayer comprise the totality of the taxpayer’s documents and electronically-stored data. *See, for example, United States v. Euge*, 444 U.S. 707 (1980). *See also Digby v. Comm’r*, 103 T.C. 441 (1994), and § 1.6001–1(a). A commenter specifically asked for clarification on whether books and records of the taxpayer include the accountant’s workpapers (whether recorded on paper, electronically or on other media). The Treasury Department and the IRS note that under existing law, these workpapers are generally considered part of the books and records of the taxpayer. *United States v. Arthur Young & Co.*, 465 U.S. 805 (1984).

The Treasury and the IRS interpret section 471(c)(1)(B)(ii) as a simplification of the inventory accounting rules in section 471(a) for certain small business taxpayers. Proposed § 1.471–1(b)(6)(i) provides that under the non-AFS section 471(c) method, a taxpayer recovers the costs of inventory in accordance with the method used in its books and records and not by using an inventory method specified under section 471(a) and regulations under 471. A books and records method that determines ending inventory and cost of goods sold that properly reflects the taxpayer’s business activities for non-Federal income tax purposes is to be used under the taxpayer’s non-AFS section 471(a) method. For example, a taxpayer that performs a physical count that is used in determining inventory in the taxpayer’s books and records must use that count for purposes of the non-AFS section 471 method.

Consistent with the rules applicable to AFS taxpayers, proposed § 1.471–1(b)(6)(ii) clarifies that a non-AFS taxpayer is not permitted to recover a cost that it otherwise would not be permitted to recover or deduct for

Federal income tax purposes solely by reason of it being an inventory cost in the taxpayer's non-AFS inventory method. These proposed regulations provide that a taxpayer may not capitalize a cost to inventory any earlier than the taxable year in which the amount is paid or incurred under the taxpayer's overall method of accounting for Federal income tax purposes (for example, if applicable, section 461(h) is met) or not permitted to be capitalized by another Code provision (for example, section 263(a)). See section 4.C.ii of this Explanation of Provisions.

#### 5. Section 451 Allocation of Transaction Price

As noted in the Background section of this preamble, section 13221(a) of the TCJA added a new section 451(b) to the Code effective for taxable years beginning after December 31, 2017. This provision provides that, for an accrual method taxpayer with an AFS, the all events test with respect to any item of gross income (or portion thereof) is not treated as met any later than when the item (or portion thereof) is included in revenue for financial accounting purposes on an AFS. Section 451(b)(1)(A) sets forth the general AFS Income Inclusion Rule, providing that, for an accrual method taxpayer with an AFS, the all events test with respect to an item of gross income, or portion thereof, is met no later than when the item, or portion thereof, is included as revenue in an AFS (AFS Income Inclusion Rule). However, section 451(b)(2) provides that the AFS Income Inclusion Rule does not apply with respect to any item of gross income the recognition of which is determined using a special method of accounting, "other than any provision of part V of subchapter P (except as provided in clause (ii) of paragraph (1)(B))." In addition, section 451(b)(4) provides that for purposes of section 451(b), in the case of a contract which contains multiple performance obligations, the allocation of the transaction price to each performance obligation is equal to the amount allocated to each performance obligation for purposes of including such item in revenue in the taxpayer's AFS. Additionally, section 451(c)(4)(D), which provides rules for allocating payments to each performance obligation for purposes of applying the advance payment rules under section 451(c), provides that for purposes of section 451(c), "rules similar to section 451(b)(4) shall apply."

The preamble to the proposed regulations under section 451(b) contained in REG-104870-18 (84 FR 47191) requested comments on the

allocation of transaction price for contracts that include both income subject to section 451 and income subject to a special method of accounting provision (specifically section 460). One commenter suggested that the allocation provisions under section 460 and the regulations thereunder, and not section 451(b)(4), should control the amount of gross income from a long-term contract that is accounted for under section 460. The commenter notes that using this approach is appropriate in light of section 451(b)(2), which reflects Congress's intent to not disturb the treatment of amounts for which a taxpayer uses a special method of accounting. The preamble to the proposed regulations under section 451(c) contained in REG-104554-18 (84 FR 47175) also included a similar request for comments for advance payment purposes; however, no comments were received in response to this request.

In light of the comment in the preceding paragraph and the questions received from taxpayers and practitioners regarding this issue in the context of other special methods of accounting (for example, section 467), the Treasury Department and the IRS are considering a rule that addresses the application of sections 451(b)(2) and (4) to contracts with income that is accounted for in part under section 451 and in part under a special method of accounting provision. The Treasury Department and the IRS are also considering a similar rule that addresses the application of section 451(c)(4)(D) to certain payments received under such contracts. The Treasury Department and the IRS have determined that these rules would benefit from further notice and public comment.

The Treasury Department and the IRS are considering a rule providing that if an accrual method taxpayer with an AFS has a contract with a customer that includes one or more items of gross income subject to a special method of accounting (as defined in proposed § 1.451-3(c)(5)) and one or more items of gross income subject to section 451, the allocation rules under section 451(b)(4) do not apply to determine the amount of each item of gross income that is accounted for under the special method of accounting provision. Accordingly, the transaction price allocation rules in section 451(b)(4) and proposed § 1.451-3(g)(1) (as contained in REG-104870-18) would apply to only the portion of the gross transaction price that is not accounted for under the special method of accounting provision (that is, the residual amount) and only

to the extent the contract contains more than one performance obligation that is subject to section 451. To the extent such a contract contains more than one performance obligation that is subject to section 451, the residual amount would be allocated to each section 451 performance obligation in proportion to the amount allocated to each such performance obligation for purposes of including such item in revenue in the taxpayer's AFS. The Treasury Department and the IRS request comments on this rule (section 451(b) special method allocation rule), including (i) whether taxpayers should be permitted to use the allocation rules under section 451(b)(4) to determine the amount of an item of gross income that is accounted for under a special method of accounting, (ii) whether a specific allocation standard should be provided for determining the amount of an item of gross income that is accounted for under a special method of accounting in situations where an allocation standard is not provided under the applicable special method of accounting rules, and (iii) whether alternative allocation options may be appropriate for allocating the residual amount to multiple performance obligations that are within the scope of section 451.

The Treasury Department and the IRS are also considering a similar allocation rule for purposes of applying the advance payment rules under section 451(c). Specifically, the Treasury Department and the IRS are considering a rule providing that if an accrual method taxpayer with an AFS receives a payment that is attributable to one or more items of gross income that are described in proposed § 1.451-8(b)(1)(i)(C) and one or more items of gross income that are subject to a special method of accounting (as defined in proposed § 1.451-3(c)(5)), then the taxpayer must determine the portion of the payment allocable to the item(s) of gross income that are described in proposed § 1.451-8(b)(1)(i)(C) by using an objective criteria standard (consistent with objective criteria standard under section 5.02(4) of Revenue Procedure 2004-34 (2004-22 IRB 991)). Under this rule a taxpayer that allocates the payment to each item of gross income in proportion to the total amount of each such item of gross income (as determined under the section 451(b) special method allocation rule that is described in the preceding paragraph), will be deemed to have met the objective criteria standard. The Treasury Department and the IRS request comments on this rule, including whether alternative payment allocation

approaches may be more appropriate (for example, an approach that permits the taxpayer to follow its AFS allocation).

### Proposed Applicability Date

These regulations are proposed to be applicable for taxable years beginning on or after the date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**. For taxable years beginning before the date the Treasury Decision adopting these regulations as final is published in the **Federal Register**, see §§ 1.448–1, 1.448–2, 1.263A–0, 1.263A–1, 1.263A–2, 1.263A–3, 1.263A–4, 1.263A–7, 1.263A–8, 1.263A–9, 1.263A–15, 1.381–1, 1.446–1, 1.460–0, 1.460–1, 1.460–3, 1.460–4, 1.460–5, 1.460–6, and 1.471–1 as contained in 26 CFR part 1, April 1, 2019.

However, for taxable years beginning after December 31, 2017, and before the date the Treasury Decision adopting these regulations as final regulations is published in the **Federal Register**, a taxpayer may rely on these proposed regulations, provided that the taxpayer follows all the applicable rules contained in the proposed regulations for each Code provision that the taxpayer chooses to apply. For example, a taxpayer using an accrual method with inventory subject to the capitalization rules of section 263A, may rely on proposed § 1.448–2 to determine whether it must continue its use of its accrual method and proposed § 1.263A–1 to determine its cost capitalizing rules, but may maintain its current inventory method rather than follow the proposed regulations under section 471.

### Statement of Availability of IRS Documents

The IRS notices, revenue rulings, and revenue procedures cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

### Special Analysis

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

### I. Paperwork Reduction Act

Proposed § 1.448–2(b)(2)(iii)(B) imposes a collection of information for an election to use prior year's allocated taxable income or loss to determine whether a partnership or other entity (other than a C corporation) is a "syndicate" for purposes of section 448(d)(3) for the current tax year. The election is made by attaching a statement to the taxpayer's original Federal income tax return for the current tax year. The election is binding for all subsequent taxable years, and can only be revoked with the consent of the Commissioner. The collection of information is voluntary for purposes of obtaining a benefit under the proposed regulations. The likely respondents are businesses or other for-profit institutions, and small businesses or organizations.

*Estimated total annual reporting burden:* 199,289 hours.

*Estimated average annual burden hours per respondent:* 1 hour.

*Estimated number of respondents:* 199,289.

*Estimated annual frequency of responses:* Once.

Other than the election statement, these proposed regulations do not impose any additional information collection requirements in the form of reporting, recordkeeping requirements or third-party disclosure statements. However, because the exemptions in sections 263A, 448, 460 and 471 are methods of accounting under the statute, taxpayers are required to request the consent of the Commissioner for a change in method of accounting under section 446(e) to implement the statutory exemptions. The IRS expects that these taxpayers will request this consent by filing Form 3115, *Application for Change in Accounting Method*. Taxpayers may request these changes using reduced filing requirements by completing only certain parts of Form 3115. See Revenue Procedure 2018–40 (2018–34 I.R.B. 320). Revenue Procedure 2018–40 provides procedures for a taxpayer to make a change in method of accounting using the automatic change procedures of Revenue Procedure 2015–13 (2015–5 IRB 419) in order to use the exemptions provided in sections 263A, 460 and/or 471.

For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(c)) (PRA), the reporting burden associated with the collection of information for the election statement and Form 3115 will be reflected in the PRA submission associated with the income tax returns under the OMB

control number 1545–0074 (in the case of individual filers of Form 3115) and 1545–0123 (in the case of business filers of Form 3115).

In 2018, the IRS released and invited comment on a draft of Form 3115 in order to give members of the public the opportunity to benefit from certain specific provisions made to the Code. The IRS received no comments on the forms during the comment period. Consequently the IRS made the forms available in January 2019 for use by the public. The IRS notes that Form 3115 applies to changes of accounting methods generally and is therefore broader than sections 263A, 448, 460 and 471.

As discussed above, the reporting burdens associated with the proposed regulations are included in the aggregated burden estimates for OMB control numbers 1545–0074 (in the case of individual filers of Form 3115), 1545–0123 (in the case of business filers of Form 3115 subject to Revenue Procedure 2019–43 and business filers that make the election under proposed § 1.448–2(b)(2)(iii)(B)). The overall burden estimates associated with the OMB control numbers below are aggregate amounts related to the entire package of forms associated with the applicable OMB control number and will include, but not isolate, the estimated burden of the tax forms that will be created or revised as a result of the information collections in these proposed regulations. These numbers are therefore not specific to the burden imposed by these proposed regulations. The burdens have been reported for other income tax regulations that rely on the same information collections and the Treasury Department and the IRS urge readers to recognize that these numbers are duplicates and to guard against overcounting the burdens imposed by tax provisions prior to the Act. No burden estimates specific to the forms affected by the proposed regulations are currently available. For the OMB control numbers discussed in the preceding paragraphs, the Treasury Department and the IRS estimate PRA burdens on a taxpayer-type basis rather than a provision-specific basis. Those estimates capture both changes made by the Act and those that arise out of discretionary authority exercised in the proposed regulations (when final) and other regulations that affect the compliance burden for that form.

The Treasury Department and IRS request comment on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork

burdens described above for each relevant form and ways for the IRS to minimize paperwork burden. In addition, when available, drafts of IRS forms are posted for comment at <https://appsirs.gov/app/picklist/lit/draftTaxForms.htm>. IRS forms are available at <https://www.irs.gov/forms-instructions>. Forms will not be finalized until after they have been approved by OMB under the PRA.

## II. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rules. The Treasury Department and the IRS have not determined whether the proposed rules, when finalized, will likely have a significant economic impact on a substantial number of small entities. The determination of whether the voluntary exemptions under sections 263A, 448, 460, and 471 will have a significant economic impact requires further study. However, because there is a possibility of significant economic impact on a substantial number of small entities, an IRFA is provided in these proposed regulations. The Treasury Department and the IRS invite comments on both the number of entities affected and the economic impact on small entities.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business.

### 1. Need for and Objectives of the Rule

As discussed earlier in the preamble, these proposed regulations largely implement voluntary exemptions that relieve small business taxpayers from otherwise applicable restrictions and requirements under sections 263A, 448, 460, and 471.

Section 448 provides a general restriction for C corporations and partnerships with C corporation partners from using the cash method of accounting, and sections 263A, 460 and 471 impose specific rules on uniform

capitalization of direct and indirect production costs, the percentage of completion method for long-term contracts, and accounting for inventory costs, respectively. Section 13102 of TCJA provided new statutory exemptions from certain of these rules and expanded the scope of existing statutory exemptions from certain of these rules to reduce compliance burdens for small taxpayers. The proposed regulations clarify the exemption qualification requirements and provide guidance with respect to the applicable methods of accounting should a taxpayer choose to apply one or more exemptions.

The objective of the proposed regulations is to provide clarity and certainty for small business taxpayers implementing the exemptions. Under the Code, small business taxpayers were able to implement these provisions for taxable years beginning after December 31, 2017 (or, in the case of section 460, for contracts entered into after December 31, 2017) even in the absence of these proposed regulations. Thus, the Treasury Department and the IRS expect that, at the time these proposed regulations are published, many small business taxpayers may have already implemented some aspects of the proposed regulations.

### 2. Affected Small Entities

The voluntary exemptions under sections 263A, 448, 460 and 471 generally apply to taxpayers that meet the \$25 million (adjusted for inflation) gross receipts test in section 448(c) and are otherwise subject to general rules under sections 263A, 448, 460, or 471.

#### A. Section 263A

The Treasury Department and the IRS expect that the addition of section 263A(i) will expand the number of small business taxpayers exempted from the requirement to capitalize costs, including interest, under section 263A. Under section 263A(i), taxpayers (other than tax shelters) that meet the \$25 million (adjusted for inflation) gross receipts test in section 448(c) can choose to deduct certain costs that are otherwise required to be capitalized to the basis of property. Section 263A applies to taxpayers that are producers, resellers, and taxpayers with self-constructed assets. The Treasury Department and the IRS estimate that there are between 38,100 and 38,900 respondents with gross receipts of not more than \$25 million (adjusted for inflation) that are eligible to change their method of accounting to no longer capitalize costs under section 263A. These estimates come from information

collected on: Form 1125–A, *Cost of Goods Sold*, and attached to Form 1120, *U.S. Corporation Income Tax Return*, Form 1065, *U.S. Return of Partnership Income* or Form 1120–S, *U.S. Income Tax Return for an S Corporation*, on which the taxpayer also indicated it had additional section 263A costs. The Treasury Department and the IRS do not have readily available data to measure the prevalence of entities with self-constructed assets. In addition, these data also do not include other business entities, such as a business reported on Schedule C, *Profit or Loss Form Business*, of an individual's Form 1040, *U.S. Individual Income Tax Return*.

Under section 263A, as modified by the TCJA, small business entities that qualified for Section 263A small reseller exception will no longer be able to use this exception. The Treasury Department and the IRS estimate that nearly all taxpayers that qualified for the small reseller exception will qualify for the small business taxpayer exemption under section 263A(i) since the small reseller exception utilized a \$10 million gross receipts test. The Treasury Department and the IRS estimate that there are between 38,100 and 38,900 respondents with gross receipts of not more than \$25 million that are eligible for the exemption under section 263A(i). These estimates come from information collected on: Form 1125–A, *Cost of Goods Sold*, and attached to Form 1120, *U.S. Corporation Income Tax Return*, Form 1065, *U.S. Return of Partnership Income* or Form 1120–S, *U.S. Income Tax Return for an S Corporation* on which the taxpayer also indicated it had additional section 263A costs. These data provide an upper bound for the number of taxpayers affected by the repeal of the small reseller exception and enactment of section 263A(i) because the data includes taxpayers that were not previously eligible for the small reseller exception, such as producers and taxpayers with gross receipts of more than \$10 million.

The proposed regulations modify the \$50 million gross receipts test in § 1.263A–1(d)(3)(ii)(B)(1) by using the section 448 gross receipts test. The \$50 million gross receipts amount is used by taxpayers to determine whether they are eligible to treat negative adjustments as additional section 263A costs for purposes of the simplified production method (SPM) under section 263A. The Treasury Department and the IRS do not have readily available data to measure the prevalence of entities using the SPM.

Proposed § 1.263A–9 modifies the current regulation to increase the

eligibility threshold to \$25 million for the election permitting taxpayers to use the highest applicable Federal rate as a substitute for the weighted average interest rate when tracing debt for purposes of capitalizing interest under section 263A(f). The Treasury Department and the IRS estimate that there are between 38,100 and 38,900 respondents with gross receipts of not more than \$25 million that are eligible to make this election. These estimates come from information collected on: Form 1125-A, *Cost of Goods Sold*, attached to Form 1120, *U.S. Corporation Income Tax Return*, Form 1065, *U.S. Return of Partnership Income* or Form 1120-S, *U.S. Income Tax Return for an S Corporation*, on which the taxpayer also indicated it had additional section 263A costs. The Treasury Department and the IRS expect that many taxpayers eligible to make the election for purposes of section 263A(f) will instead elect the small business exemption under section 263A(i). Additionally, taxpayers who chose to apply section 263A even though they qualify for the small business exemption under 263A(i) may not have interest expense required to be capitalized under section 263A(f). As a result, although these data do not include taxpayers with self-constructed assets that are eligible for the election, the Treasury Department and the IRS estimate that this data provides an upper bound for the number of eligible taxpayers.

#### B. Section 448

The Treasury Department and the IRS expect that the changes to section 448(c) by the TCJA will expand the number of taxpayers permitted to use the cash method. Section 448(a) provides that C corporations, partnerships with C corporations as partners, and tax shelters are not permitted to use the cash method of accounting; however section 448(c), as amended by the TCJA, provides that C corporations or partnerships with C corporations as partners, other than tax shelters, are not restricted from using the cash method if their average annual gross receipts are \$25 million (adjusted for inflation) or less. Prior to the amendments made by the TCJA, the applicable gross receipts threshold was \$5 million. Section 448 does not apply to S corporations, partnerships without a C corporation partner, or any other business entities (including sole proprietorships reported on an individual's Form 1040). The Treasury Department and the IRS estimate that there are between 587,000 and 595,000 respondents with gross receipts of not more than \$5 million presently using an accrual method, and

between 70,000 and 73,000 respondents with gross receipts of more than \$5 million but not more than \$25 million that are permitted to use to the cash method. These estimates come from information collected on Form 1120, *U.S. Corporation Income Tax Return*, Form 1065, *U.S. Return of Partnership Income* and Form 1120-S, *U.S. Income Tax Return for an S Corporation*.

Under the proposed regulations, taxpayers that would meet the gross receipts test of section 448(c) and seem to be eligible to use the cash method but for the definition of "syndicate" under section 448(d)(3), may elect to use the allocated taxable income or loss of the immediately preceding taxable year to determine whether the taxpayer is a "syndicate" for purposes of section 448(d)(3) for the current taxable year. The Treasury Department and IRS estimate that 199,289 respondents may potentially make this election. This estimate comes from information collected on the Form 1065, *U.S. Return of Partnership Income* and Form 1120-S, *U.S. Income Tax Return for an S Corporation*, and the Form 1125-A, *Cost of Goods Sold*, attached to the Forms 1065 and 1120-S. The Treasury Department and the IRS estimate that these data provide an upper bound for the number of eligible taxpayers because not all taxpayers eligible to make the election will choose to do so.

#### C. Section 460

The Treasury Department and the IRS expect that the modification of section 460(e)(1)(B) by the TCJA will expand the number of taxpayers exempted from the requirement to apply the percentage-of-completion method to long-term construction contracts. Under section 460(e)(1)(B), as modified by the TCJA, taxpayers (other than a tax shelters) that meet the \$25 million (adjusted for inflation) gross receipts test in section 448(c) are not required to use PCM to account for income from a long-term construction contract expected to be completed in two years. Prior to the modification of section 460(e)(1)(B) by the TCJA, a separate \$10 million dollar gross receipts test applied. The Treasury Department and the IRS estimate that there are between 15,400 and 18,000 respondents with gross receipts of between \$10 million and \$25 million who are eligible to change their method of accounting to apply the modified exemption. This estimate comes from information collected on the Form 1120, *U.S. Corporation Income Tax Return*, Form 1065, *U.S. Return of Partnership Income* and Form 1120-S, *U.S. Income Tax Return for an S Corporation* in which the taxpayer indicated its

principal business activity was construction (NAICS codes beginning with 23). These data available do not distinguish between long-term contracts and other contracts, and also do not include other business entities that do not file Form 1120, *U.S. Corporation Income Tax Return*, Form 1065, *U.S. Return of Partnership Income*, and Form 1120-S, *U.S. Income Tax Return for an S Corporation*, such as a business reported on Schedule C, *Profit or Loss from Business*, of an individual's Form 1040, *U.S. Individual Income Tax Return*.

#### D. Section 471

The Treasury Department and the IRS expect that the addition of section 471(c) will expand the number of taxpayers exempted from the requirement to take inventories under section 471(a). Under section 471(c), taxpayers (other than tax shelters) that meet the \$25 million (adjusted for inflation) gross receipts test in section 448(c) can choose to apply certain simplified inventory methods rather than those otherwise required by section 471(a). The Treasury Department and the IRS estimate that there are between 3,200,000 and 3,400,000 respondents with gross receipts of not more than \$25 million that are exempted from the requirement to take inventories, and will treat their inventory either as non-incidental materials and supplies, or conform their inventory method to the method reflected in their AFS, or if they do not have an AFS, in their books and records. This estimate comes from data collected on the Form 1125-A, *Cost of Goods Sold*. Within that set of taxpayers, the Treasury Department and the IRS estimate that there are between 10,500 and 11,300 respondents that may choose to conform their method of accounting for inventories to their method for inventory reflected in their AFS. This estimate comes from IRS-collected data on taxpayers that filed the Form 1125-A, *Cost of Goods Sold*, in addition to a Schedule M3, *Net Income (Loss) Reconciliation for Corporations With Total Assets of \$10 Million or More*, that indicated they had an AFS. These data provide a lower bound because they do not include other business entities, such as a business reported on Schedule C, *Profit or Loss from Business*, of an individual's Form 1040, *U.S. Individual Income Tax Return*, that are not required to file the Form 1125-A, *Cost of Goods Sold*.

#### 3. Impact of the Rule

As discussed earlier in the preamble, section 448 provides a general restriction for C corporations,

partnerships with C corporation partners, and tax shelters from using the cash method of accounting, and sections 263A, 460 and 471 impose specific rules on uniform capitalization of direct and indirect production costs, the percentage of completion method for long-term contracts, and accounting for inventory costs, respectively. Section 13102 of TCJA provided new statutory exemptions and expanded the scope of existing statutory exemptions from these rules to reduce compliance burdens for small taxpayers (e.g., reducing the burdens associated with applying complex accrual rules under section 451 and 461, maintaining inventories, identifying and tracking costs that are allocable to property produced or acquired for resale, identifying and tracking costs that are allocable to long-term contracts, applying the look-back method under section 460, etc.). For example, a small business taxpayer with average gross receipts of \$20 million may pay an accountant an annual fee to perform a 25 hour analysis to determine the section 263A costs that are capitalized to inventory produced during the year. If this taxpayer chooses to apply the exemption under section 263A and these proposed regulations, it will no longer need to pay an accountant for the annual section 263A analysis.

The proposed regulations implementing these exemptions are completely voluntary because small business taxpayers may continue using an accrual method of accounting, and applying sections 263A, 460 and 471 if they so choose. Thus, the exemptions increase the flexibility small business taxpayers have regarding their accounting methods relative to other businesses. The proposed regulations provide clarity and certainty for small business taxpayers implementing the exemptions.

#### 4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Treasury Department and the IRS have not performed an analysis with respect to the projected reporting, recordkeeping, and other compliance requirements associated with the statutory exemptions under sections 263A, 448, 460, and 471 and the proposed regulations implementing these exemptions. However, the Treasury Department and the IRS anticipate that the statutory exemptions and the proposed regulations implementing these exemptions will reduce the reporting, recordkeeping, and other compliance requirements of affected taxpayers relative to the requirements that exist under the

general rules in sections 263A, 448, 460, and 471.

#### 5. Alternatives Considered

As described in more detail earlier in the preamble, the Treasury Department and the IRS considered a number of alternatives under the proposed regulations. For example, in providing rules related to inventory exemption in Section 471(c)(1)(B)(i), which permits the taxpayer to treat its inventory as non-incidental materials and supplies, the Treasury Department and the IRS considered whether inventoriable costs should be recovered by (i) using an approach similar to the approach set forth under Revenue Procedure 2001–10 (2001–2 IRB 272) and Revenue Procedure 2002–28 (2002–28 IRB 815), which provided that inventory treated as non-incidental materials and supplies was “used and consumed,” and thus recovered through costs of goods sold by a cash basis taxpayer, when the inventory items were provided to a customer, or when the taxpayer paid for the items, whichever was later, or (ii) using an alternative approach that treated inventory as “used and consumed” and thus recovered through costs of goods sold by the taxpayer, in a taxable year prior to the year in which the inventory item is provided to the customer (e.g., in the taxable year in which an inventory item is acquired or produced). The alternative approach described in (ii) would produce a savings equal the amount of the cost recovery multiplied by an applicable discount rate (determined based on the number of years the cost of goods sold recovery would be accelerated under this alternative). The Treasury Department and the IRS interpret section 471(c)(1)(B)(i) and its legislative history generally as codifying the rules provided in the administrative guidance existing at the time TCJA was enacted. Based on this interpretation, the Treasury Department and the IRS have determined that section 471(c) materials and supplies are “used and consumed” in the taxable year the taxpayer provides the goods to a customer, and are recovered through costs of goods sold in that year or the taxable year in which the cost of the goods is paid or incurred (in accordance with the taxpayer’s method of accounting), whichever is later. The Treasury Department and the IRS do not believe this approach creates or imposes undue burdens on taxpayers.

#### 6. Duplicate, Overlapping, or Relevant Federal Rules

The proposed rules would not conflict with any relevant federal rules. As discussed above, the proposed

regulations merely implement voluntary exemptions that relieve small business taxpayers from otherwise applicable restrictions and requirements under sections 263A, 448, 460, and 471.

#### III. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial, direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 I.R.B. 667 (April 20, 2020), provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

#### Drafting Information

The principal author of these proposed regulations is Anna Gleysteen, IRS Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

### PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.263A-0 is amended by:

- 1. Revising the entry in the table of contents for § 1.263A-1(b)(1).
- 2. Redesignating the entries in the table of contents for § 1.263A-1(j), (k), and (l) as the entries for § 1.263A-1(k), (l), and (m).
- 3. Adding a new entry in the table of contents for § 1.263A-1(j).
- 4. Revising the newly designated entries for § 1.263A-1(k), (l), and (m).
- 5. Revising the entries in the table of contents for § 1.263A-3(a)(2)(ii).
- 6. Adding entries for § 1.263A-3(a)(5) and revising the entry for § 1.263A-3(b).
- 7. Redesignating the entries in the table of contents for § 1.263A-4(a)(3) and (4) as the entries for § 1.263A-4(a)(4) and (5).
- 8. Adding in the table of contents a new entry for § 1.263A-4(a)(3).
- 9. Revising the entry in the table of contents for § 1.263A-4(d) introductory text.
- 10. Redesignating the entry in the table of contents for § 1.263A-4(d)(5) as the entry for § 1.263A-4(d)(7).
- 11. Adding in the table of contents a new entry for § 1.263A-4(d)(5).
- 12. Adding an entry in the table of contents for § 1.263A-4(d)(6).
- 13. Adding an entry in the table of contents for § 1.263A-4(e)(5).
- 14. Revising the entry in the table of contents for § 1.263A-4(f) introductory text.
- 15. Adding an entry in the table of contents for § 1.263A-4(g).
- 16. Revising the entry in the table of contents for § 1.263A-7(a)(4).

The revisions and additions read as follows:

#### § 1.263A-0 Outline of regulations under section 263A.

\* \* \* \* \*

#### § 1.263A-1 Uniform Capitalization of Costs.

\* \* \* \* \*

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

##### (1) Small business taxpayers.

\* \* \* \* \*

##### (j) Exemption for certain small business taxpayers.

##### (1) In general.

(2) Application of the section 448(c) gross receipts test.

- (i) In general.
- (ii) Gross receipts of individuals, etc.
- (iii) Partners and S corporation shareholders.

##### (iv) Examples.

##### (A) Example 1

##### (B) Example 2

##### (3) Change in method of accounting.

##### (i) In general.

##### (ii) Prior section 263A method

change.

##### (k) Special rules

##### (1) Costs provided by a related person.

##### (i) In general

##### (ii) Exceptions

##### (2) Optional capitalization of period

costs.

##### (i) In general.

##### (ii) Period costs eligible for capitalization.

##### (3) Trade or business application

##### (4) Transfers with a principal purpose of tax avoidance. [Reserved]

##### (1) Change in method of accounting.

##### (1) In general.

##### (2) Scope limitations.

##### (3) Audit protection.

##### (4) Section 481(a) adjustment.

##### (5) Time for requesting change.

##### (m) Effective/applicability date.

#### § 1.263A-3 Rules Relating to Property Acquired for Resale.

##### (a) \* \* \*

##### (2) \* \* \*

##### (ii) Exemption for small business taxpayers.

\* \* \* \* \*

##### (5) De minimis production activities.

##### (i) In general.

##### (ii) Definition of gross receipts to determine de minimis production activities.

##### (iii) Example.

##### (b) [Reserved].

\* \* \* \* \*

#### § 1.263A-4 Rules for Property

##### Produced in a Farming Business.

##### (a) \* \* \*

##### (3) Exemption for certain small

business taxpayers.

\* \* \* \* \*

##### (d) Election not to have section 263A apply under section 263A(d)(3).

\* \* \* \* \*

##### (5) Revocation of section 263A(d)(3) election in order to apply exemption under section 263A(i).

##### (6) Change from applying exemption under section 263A(i) to making a section 263A(d)(3) election.

\* \* \* \* \*

##### (e) \* \* \*

##### (5) Special temporary rule for citrus plants lost by reason of casualty.

##### (f) Change in method of accounting.

\* \* \* \* \*

##### (g) Effective date.

##### (1) In general.

##### (2) Changes made by Tax Cuts and Jobs Act (Pub. L. 115-97).

##### § 1.263A-7 Changing a method of accounting under section 263A.

##### (a) \* \* \*

##### (4) Applicability dates.

##### (i) In general.

##### (ii) Changes made by Tax Cuts and Jobs Act (Pub. L. 115-97).

\* \* \* \* \*

#### ■ **Par. 3. Section 1.263A-1 is amended by:**

##### ■ 1. Revising the paragraph (a)(2) subject heading.

##### ■ 2. In paragraph (a)(2)(i), revising the second sentence and adding a new third sentence.

##### ■ 3. Revising paragraph (b)(1).

##### ■ 4. In the second sentence of paragraph (d)(3)(ii)(B)(1), the language “§ 1.263A-3(b)” is removed and the language “§ 1.263A-1(j)” is added in its place.

##### ■ 5. Redesignating paragraphs (j) through (l) as paragraphs (k) through (m).

##### ■ 6. Adding a new paragraph (j).

The revisions and addition read as follows:

#### § 1.263A-1 Uniform capitalization of costs.

##### (a) \* \* \*

(2) *Applicability dates.* (i) \* \* \* In the case of property that is inventory in the hands of the taxpayer, however, these sections are applicable for taxable years beginning after December 31, 1993. The small business taxpayer exception described in paragraph (b)(1) of this section and set forth in paragraph (j) of this section is applicable for taxable years beginning after December 31, 2017. \* \* \*

\* \* \* \* \*

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

(1) *Small business taxpayers.* For taxable years beginning after December 31, 2017, see section 263A(i) and paragraph (j) of this section for an exemption for certain small business taxpayers from the requirements of section 263A.

\* \* \* \* \*

(j) *Exemption for certain small business taxpayers—(1) In general.* A taxpayer, other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 448(a)(3), that meets the gross receipts test under section 448(c) and § 1.448-2(c) (section 448(c) gross receipts test) for any taxable year (small business taxpayer) is not required to capitalize costs under section 263A to any real or tangible personal property produced, and any real or personal property described in section 1221(a)(1) acquired for resale, during that taxable year.

(2) *Application of the section 448(c) gross receipts test*—(i) *In general.* In the case of any taxpayer that is not a corporation or a partnership, and except as provided in paragraphs (j)(2)(ii) and (iii) of this section, the section 448(c) gross receipts test is applied in the same manner as if each trade or business of the taxpayer were a corporation or partnership.

(ii) *Gross receipts of individuals, etc.* Except when the aggregation rules of section 448(c)(2) apply, the gross receipts of a taxpayer other than a corporation or partnership are the amount derived from all trades or businesses of such taxpayer. Amounts not related to a trade or business are excluded from the gross receipts of the taxpayer. For example, an individual taxpayer's gross receipts do not include inherently personal amounts, such as personal injury awards or settlements with respect to an injury of the individual taxpayer, disability benefits, Social Security benefits received by the taxpayer during the taxable year, and wages received as an employee that are reported on Form W-2.

(iii) *Partners and S corporation shareholders.* Except when the aggregation rules of section 448(c)(2) apply, each partner in a partnership includes a share of the partnership's gross receipts in proportion to such partner's distributive share (as determined under section 704) of items of gross income that were taken into account by the partnership under section 703. Similarly, a shareholder of an S corporation includes such shareholder's *pro rata* share of S corporation gross receipts taken into account by the S corporation under section 1363(b).

(iv) *Examples.* The operation of this paragraph (j) is illustrated by the following examples:

(A) *Example 1.* Taxpayer A is an individual who operates two separate and distinct trades or business that are reported on Schedule C, *Profit or Loss from Business*, of A's Federal income tax return. For 2020, one trade or business has annual average gross receipts of \$5 million, and the other trade or business has average annual gross receipts of \$35 million. Under paragraph (j)(2)(ii) of this section, for 2020, neither of A's trades or businesses meets the gross receipts test of paragraph (j)(2) of this section (\$5 million + \$35 million = \$40 million, which is greater than the inflation-adjusted gross receipts test amount for 2020, which is \$26 million).

(B) *Example 2.* Taxpayer B is an individual who operates three separate and distinct trades or business that are

reported on Schedule C of B's Federal income tax return. For 2020, Business X is a retail store with average annual gross receipts of \$15 million, Business Y is a dance studio with average annual gross receipts of \$6 million, and Business Z is a car repair shop with average annual gross receipts of \$12 million. Under paragraph (j)(2)(ii) of this section, B's gross receipts are the combined amount derived from all three of B's trades or businesses. Therefore, for 2020, X, Y and Z do not meet the gross receipts test of paragraph (j)(2)(i) of this section (\$15 million + \$6 million + \$12 million = \$33 million, which is greater than the inflation-adjusted gross receipts test amount for 2020, which is \$26 million).

(3) *Change in method of accounting*—(i) *In general.* A change from applying the small business taxpayer exemption under paragraph (j) of this section to not applying the exemption under this paragraph (j), or *vice versa*, is a change in method of accounting under section 446(e) and § 1.446-1(e). A taxpayer obtains the consent of the Commissioner to change its method of accounting to comply with paragraph (j) of this section by following the applicable administrative procedures to obtain the consent of the Commissioner to change a method of accounting under section 446(e) as published in the Internal Revenue Bulletin (See Revenue Procedure 2015-13, 2015-5 IRB 419 (or successor) (see also § 601.601(d)(2) of this chapter)). If an item of income or expense is not treated consistently from year to year, that treatment may not clearly reflect income, notwithstanding the application of this section. For rules relating to the clear reflection of income and the pattern of consistent treatment of an item, see section 446 and § 1.446-1.

(ii) *Prior section 263A method change.* A taxpayer that otherwise meets the requirements of paragraph (j) of this section, and that had previously changed its method of accounting to capitalize costs under section 263A because it no longer met the section 448(c) gross receipts test, may not change its method of accounting under section 263A to apply the exemption under paragraph (j) of this section without the consent of the Commissioner. Taxpayers must follow the administrative procedures to obtain the consent of the Commissioner to change a method of accounting under section 446(e) as published in the Internal Revenue Bulletin (See Revenue Procedure 2015-13, 2015-5 IRB 419 (or successor) (see also § 601.601(d)(2) of this chapter)). For rules relating to the clear reflection of income and the

pattern of consistent treatment of an item, see section 446 and § 1.446-1.

\* \* \* \* \*

■ **Par. 4.** Section 1.263A-2 is amended by:

- 1. Adding a sentence at the end of paragraph (a) introductory text.
- 2. Revising paragraph (a)(1)(ii)(C).
- 3. Revising the paragraph (g) subject heading.
- 4. Adding paragraph (g)(4).

The additions and revisions read as follows:

**§ 1.263A-2 Rules relating to property produced by the taxpayer.**

(a) \* \* \* For taxable years beginning after December 31, 2017, see § 1.263A-1(j) for an exception in the case of a small business taxpayer that meets the gross receipts test of section 448(c) and § 1.448-2(c).

(1) \* \* \*

(ii) \* \* \*

(C) Home construction contracts. Section 460(e)(1) provides that section 263A applies to a home construction contract unless that contract will be completed within two years of the contract commencement date and, for contracts entered into after December 31, 2017, in taxable years ending after December 31, 2017, the taxpayer meets the gross receipts test of section 448(c) and § 1.448-2(c) for the taxable year in which such contract is entered into.

\* \* \* \* \*

(g) *Applicability dates.* \* \* \*

(4) The rules set forth in the last sentence of the introductory text of paragraph (a) of this section and in paragraph (a)(1)(ii)(C) of this section apply for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**].

■ **Par. 5.** Section 1.263A-3 is amended:

- 1. In paragraph (a)(1), by revising the second sentence.
- 2. By revising paragraphs (a)(2)(ii) and (iii).
- 4. In paragraph (a)(3), by removing the language “small reseller” and adding in its place the language “small business taxpayer”.
- 5. In paragraph (a)(4)(ii), by removing the language “(within the meaning of paragraph (a)(2)(iii) of this section)” and adding in its place the language “(within the meaning of paragraph (a)(5) of this section)”.
- 6. By adding paragraph (a)(5).
- 7. By removing and reserving paragraph (b).
- 8. By revising paragraph (f).

The revisions and additions read as follows:

**§ 1.263A-3 Rules relating to property acquired for resale.**

(a) \* \* \*

(1) \* \* \* However, for taxable years beginning after December 31, 2017, a small business taxpayer, as defined in § 1.263A-1(j), is not required to apply section 263A in that taxable year. \* \* \*

(2) \* \* \*

(ii) *Exemption for certain small business taxpayers.* For taxable years beginning after December 31, 2017, see § 1.263A-1(j) for an exception in the case of a small business taxpayer that meets the gross receipts test of section 448(c) and § 1.448-2(c).

(iii) *De minimis production activities.* See paragraph (a)(5) of this section for rules relating to an exception for resellers with *de minimis* production activities.

\* \* \* \* \*

(5) *De minimis production activities—*  
(i) *In general.* In determining whether a taxpayer's production activities are *de minimis*, all facts and circumstances must be considered. For example, the taxpayer must consider the volume of the production activities in its trade or business. Production activities are presumed *de minimis* if—

(A) The gross receipts from the sale of the property produced by the reseller are less than 10 percent of the total gross receipts of the trade or business; and

(B) The labor costs allocable to the trade or business's production activities are less than 10 percent of the reseller's total labor costs allocable to its trade or business.

(ii) *Definition of gross receipts to determine de minimis production activities.* Gross receipts has the same definition as for purposes of the gross receipts test under § 1.448-2(c), except that gross receipts are measured at the trade-or-business level rather than at the single-employer level.

(iii) *Example: Reseller with de minimis production activities.* Taxpayer N is in the retail grocery business. In 2019, N's average annual gross receipts for the three previous taxable years are greater than the gross receipts test of section 448(c). Thus, N is not exempt from the requirement to capitalize costs under section 263A. N's grocery stores typically contain bakeries where customers may purchase baked goods produced by N. N produces no other goods in its retail grocery business. N's gross receipts from its bakeries are 5 percent of the entire grocery business. N's labor costs from its bakeries are 3 percent of its total labor costs allocable to the entire grocery business. Because both ratios are less than 10 percent, N's production activities are *de minimis*.

Further, because N's production activities are incident to its resale activities, N may use the simplified resale method, as provided in paragraph (a)(4)(ii) of this section.

\* \* \* \* \*

(f) *Applicability dates.* (1) Paragraphs (d)(3)(i)(C)(3), (d)(3)(i)(D)(3), and (d)(3)(i)(E)(3) of this section apply for taxable years ending on or after January 13, 2014.

(2) The rules set forth in the second sentence of paragraph (a)(1) of this section, paragraphs (a)(2)(ii) and (iii) of this section, the third sentence of paragraph (a)(3) of this section, and paragraphs (a)(4)(ii) and (a)(5) of this section apply for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**].

■ **Par. 6.** Section 1.263A-4 is amended:

■ 1. In paragraph (a)(1), by revising the last sentence.

■ 2. In paragraph (a)(2)(ii)(A)(1), by removing the language “section 464(c)” and adding in its place the language with “section 461(k)”.

■ 3. By redesignating paragraphs (a)(3) and (4) as paragraphs (a)(4) and (5) respectively.

■ 4. By adding new paragraph (a)(3).

■ 5. By revising the paragraph (d) subject heading.

■ 6. In paragraph (d)(1), by revising the last sentence and adding a new last sentence.

■ 7. In paragraph (d)(3)(i), by removing the last sentence.

■ 8. By revising paragraph (d)(3)(ii).

■ 9. By redesignating paragraph (d)(5) as paragraph (d)(7).

■ 10. By adding new paragraph (d)(5)

■ 11. By adding paragraphs (d)(6) and (e)(5).

■ 12. By redesignating paragraph (f) as paragraph (g).

■ 13. By adding new paragraph (f).

■ 15. By revising the subject headings for newly redesignated paragraphs (g) and (g)(1), and revising newly designated paragraph (g)(2).

The revisions and additions read as follows:

**§ 1.263A-4 Rules for property produced in a farming business.**

(a) \* \* \*

(1) \* \* \* Except as provided in paragraphs (a)(2), (a)(3), and (e) of this section, taxpayers must capitalize the costs of producing all plants and animals unless the election described in paragraph (d) of this section is made.

\* \* \* \* \*

(3) *Exemption for certain small business taxpayers.* For taxable years beginning after December 31, 2017, see

§ 1.263A-1(j) for an exception in the case of a small business taxpayer that meets the gross receipts test of section 448(c) and § 1.448-2(c).

\* \* \* \* \*

(d) *Election not to have section 263A apply under section 263A(d)(3)—*(1) \* \* \* Except as provided in paragraph (d)(5) and (6) of this section, the election is a method of accounting under section 446. An election made under section 263A(d)(3) and this paragraph (d) is revocable only with the consent of the Commissioner.

\* \* \* \* \*

(3) \* \* \*  
(ii) *Nonautomatic election.* Except as provided in paragraphs (d)(5) and (6) of this section, a taxpayer that does not make the election under this paragraph (d) as provided in paragraph (d)(3)(i) of this section must obtain the consent of the Commissioner to make the election by filing a Form 3115, *Application for Change in Method of Accounting*, in accordance with § 1.446-1(e)(3).

\* \* \* \* \*

(5) *Revocation of section 263A(d)(3) election in order to apply exemption under section 263A(i).* A taxpayer that elected under section 263A(d)(3) and paragraph (d)(3) of this section not to have section 263A apply to any plant produced in a farming business that wants to revoke its section 263A(d)(3) election, and in the same taxable year, apply the small business taxpayer exemption under section 263A(i) and § 1.263A-1(j) may revoke the election in accordance with the applicable administrative guidance as published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter). A revocation of the taxpayer's section 263A(d)(3) election under this paragraph (d)(5) is not a change in method of accounting under sections 446 and 481 and §§ 1.446-1 and 1.481-1 through 1.481-5.

(6) *Change from applying exemption under section 263A(i) to making a section 263A(d)(3) election.* A taxpayer whose method of accounting is to not capitalize costs under section 263A based on the exemption under section 263A(i), that becomes ineligible to use the exemption under section 263A(i), and is eligible and wants to elect under section 263A(d)(3) for this same taxable year to not capitalize costs under section 263A for any plant produced in the taxpayer's farming business, must make the election in accordance with the applicable administrative guidance as published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter). An election under section 263A(d)(3) made in accordance with

this paragraph (d)(6) is not a change in method of accounting under sections 446 and 481 and §§ 1.446–1 and 1.481–1 through 1.481–5.

\* \* \* \* \*

(e) \* \* \*

(5) *Special temporary rule for citrus plants lost by reason of casualty.* Section 263A(d)(2)(A) provides that if plants bearing an edible crop for human consumption were lost or damaged while in the hands of the taxpayer by reason of freezing temperatures, disease, drought, pests, or casualty, section 263A does not apply to any costs of the taxpayer of replanting plants bearing the same type of crop (whether on the same parcel of land on which such lost or damaged plants were located or any other parcel of land of the same acreage in the United States). The rules of this paragraph (e)(5) apply to certain costs that are paid or incurred after December 22, 2017, and on or before December 22, 2027, to replant citrus plants after the loss or damage of citrus plants. Notwithstanding paragraph (e)(2) of this section, in the case of replanting citrus plants after the loss or damage of citrus plants by reason of freezing temperatures, disease, drought, pests, or casualty, section 263A does not apply to replanting costs paid or incurred by a taxpayer other than the owner described in section 263A(d)(2)(A) if—

(i) The owner described in section 263A(d)(2)(A) has an equity interest of not less than 50 percent in the replanted citrus plants at all times during the taxable year in which such amounts were paid or incurred and the taxpayer holds any part of the remaining equity interest; or

(ii) The taxpayer acquired the entirety of the equity interest in the land of that owner described in section 263A(d)(2)(A) and on which land the lost or damaged citrus plants were located at the time of such loss or damage, and the replanting is on such land.

(f) *Change in method of accounting.* Except as provided in paragraphs (d)(5) and (6) of this section, any change in a taxpayer's method of accounting necessary to comply with this section is a change in method of accounting to which the provisions of sections 446 and 481 and § 1.446–1 through 1.446–7 and § 1.481–1 through 1.481–3 apply.

(g) *Applicability dates—(1) In general.* \* \* \*

(2) *Changes made by Tax Cuts and Jobs Act (Pub. L. 115–97).* Paragraphs (a)(3), (d)(5), (d)(6), and (e)(5) of this section apply for taxable years ending on or after [date the Treasury Decision adopting these proposed regulations as

final is published in the **Federal Register**]. Except as otherwise provided in this paragraph (g), for taxable years beginning before [date the Treasury Decision adopting these regulations as final is published in the **Federal Register**], see § 1.263A–4 as contained in 26 CFR part 1, revised April 1, 2019.

■ **Par. 7.** § 1.263A–7 is amended:

■ 1. By revising paragraph (a)(3)(i).

■ 2. By redesignating paragraph (a)(4) as paragraph (a)(4)(i).

■ 3. By adding a paragraph (a)(4) subject heading.

■ 4. By revising the newly designated paragraph (a)(4)(i) subject heading.

■ 5. By adding paragraph (a)(4)(ii).

■ 6. In paragraph (b)(1), by removing the language “Rev. Proc. 97–27 (1997–21 I.R.B.10)” and adding in its place the language “Revenue Procedure 2015–13 (2015–5 IRB 419)”.

■ 7. In paragraph (b)(2)(ii), by removing the language “Rev. Proc. 2002–9 (2002–1 C.B. 327) and Rev. Proc. 97–27 (1991–1 C.B. 680)” and adding the language “applicable administrative procedures” in its place.

The revisions and additions read as follows:

**§ 1.263A–7 Changing a method of accounting under section 263A.**

(a) \* \* \*

(3) \* \* \*

(i) For taxable years beginning after December 31, 2017, resellers of real or personal property or producers of real or tangible personal property whose average annual gross receipts for the immediately preceding 3-taxable-year period (or lesser period if the taxpayer was not in existence for the three preceding taxable years, annualized as required) exceed the gross receipts test of section 448(c) and the accompanying regulations where the taxpayer was not subject to section 263A in the prior taxable year;

\* \* \* \* \*

(4) *Applicability dates—(i) In general.* \* \* \*

(ii) *Changes made by Tax Cuts and Jobs Act (Pub. L. 115–97).* Paragraph (a)(3)(i) of this section applies to taxable years ending on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**]. Except as otherwise provided in this paragraph (a)(4), for taxable years beginning before [date the Treasury Decision adopting these regulations as final is published in the **Federal Register**], see § 1.263A–7(a)(3)(i) as contained in 26 CFR part 1, revised April 1, 2019.

\* \* \* \* \*

■ **Par. 8.** Section 1.263A–8 is amended by adding a sentence to the end of paragraph (a)(1) to read as follows:

**§ 1.263A–8 Requirement to capitalize interest.**

(a) \* \* \*

(1) \* \* \* However, a taxpayer, other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 448(a)(3), that meets the gross receipts test of section 448(c) for the taxable year is not required to capitalize costs, including interest, under section 263A. See § 1.263A–1(j).

\* \* \* \* \*

■ **Par. 9.** Section 1.263A–9 is amended by adding a sentence at the end of paragraph (e)(2) to read as follows:

**§ 1.263A–9 The avoided cost method.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \* A taxpayer is an eligible taxpayer for a taxable year for purposes of this paragraph (e) if the taxpayer is a small business taxpayer, as defined in § 1.263A–1(j).

\* \* \* \* \*

■ **Par. 10.** Section 1.263A–15 is amended by adding paragraph (a)(4) to read as follows:

**§ 1.263A–15 Effective dates, transitional rules, and anti-abuse rule.**

(a) \* \* \*

(4) The last sentence of each of § 1.263A–8(a)(1) and § 1.263A–9(e)(2) apply to taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**]. Except as otherwise provided in this paragraph (a)(4), for taxable years beginning before [date the Treasury Decision adopting these regulations as final is published in the **Federal Register**], see § 1.263A–8(a)(1) and § 1.263A–9(e)(2) as contained in 26 CFR part 1, revised April 1, 2019.

\* \* \* \* \*

**§ 1.381(c)(5)–1 [Amended]**

■ **Par. 11.** Section 1.381(c)(5)–1 is amended:

■ 1. In paragraph (a)(6), by designating *Examples 1* and 2 as paragraphs (a)(6)(i) and (ii), respectively.

■ 2. In newly-designated paragraphs (a)(6)(i) and (ii), by redesignating the paragraphs in the first column as the paragraphs in the second column:

Old paragraphs	New paragraphs
(a)(6)(i)(i) and (ii) .....	(a)(6)(i)(A) and (B).
(a)(6)(ii)(i) and (ii) .....	(a)(6)(ii)(A) and (B).

■ 3. In newly designated paragraphs (a)(6)(ii)(A) and (B), by removing the language “small reseller” and adding in its place the language “small business taxpayer” everywhere it appears.

■ **Par. 12.** § 1.446–1 is amended:

■ 1. In paragraph (a)(4)(i), by revising the first sentence.

■ 2. By revising paragraph (c)(2)(i).

■ 3. By adding paragraph (c)(3).

The revisions and addition read as follows:

**§ 1.446–1 General rule for methods of accounting.**

(a) \* \* \*

(4) \* \* \*

(i) Except in the case of a taxpayer qualifying as a small business taxpayer for the taxable year under section 471(c), in all cases in which the production, purchase or sale of merchandise of any kind is an income-producing factor, merchandise on hand (including finished goods, work in progress, raw materials, and supplies) at the beginning and end of the year shall be taken into account in computing the taxable income of the year. \* \* \*

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) In any case in which it is necessary to use an inventory, the accrual method of accounting must be used with regard to purchases and sales unless:

(A) The taxpayer qualifies as a small business taxpayer for the taxable year under section 471(c), or

(B) Otherwise authorized under paragraph (c)(2)(ii) of this section.

\* \* \* \* \*

(3) **Applicability date.** The first sentence of paragraph (a)(4)(i) of this section and paragraph (c)(2)(i) of this section apply to taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**]. For taxable years beginning before [date the Treasury Decision adopting these regulations as final is published in the **Federal Register**], see § 1.446–1(c) as contained in 26 CFR part 1, revised April 1, 2019.

\* \* \* \* \*

■ **Par. 13.** Section 1.448–1 is amended by adding new first and second sentences to paragraphs (g)(1) and (h)(1) to read as follows:

**§ 1.448–1 Limitation on the use of the cash receipts and disbursements method of accounting.**

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \* The rules provided in paragraph (g) of this section apply to taxable years beginning before January

1, 2018. See § 1.448–2 for rules relating to taxable years beginning after December 31, 2017. \* \* \*

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \* The rules provided in paragraph (h) of this section apply to taxable years beginning before January 1, 2018. See § 1.448–2 for rules relating to taxable years beginning after December 31, 2017. \* \* \*

\* \* \* \* \*

**§ 1.448–2 [Redesignated as § 1.448–3]**

■ **Par. 14.** Section 1.448–2 is redesignated as § 1.448–3.

■ **Par. 15.** A new § 1.448–2 is added to read as follows:

**§ 1.448–2 Limitation on the use of the cash receipts and disbursements method of accounting for taxable years beginning after December 31, 2017.**

(a) **Limitation on method of accounting—(1) In general.** The rules of this section relate to the limitation on the use of the cash receipts and disbursements method of accounting (cash method) by certain taxpayers applicable for taxable years beginning after December 31, 2017. For rules applicable to taxable years beginning before January 1, 2018, see §§ 1.448–1 and 1.448–1T.

(2) **Limitation rule.** Except as otherwise provided in this section, the computation of taxable income using the cash method is prohibited in the case of a:

(i) C corporation;

(ii) Partnership with a C corporation as a partner, or a partnership that had a C corporation as a partner at any time during the partnership’s taxable year beginning after December 31, 1986; or

(iii) Tax shelter.

(3) **Treatment of combination methods—(i) In general.** For purposes of this section, the use of a method of accounting that records some, but not all, items on the cash method is considered the use of the cash method. Thus, a C corporation that uses a combination of accounting methods including the use of the cash method is subject to this section.

(ii) **Example.** The following example illustrates the operation of this paragraph (a)(3). In 2020, A is a C corporation with average annual gross receipts for the prior three taxable years of greater than \$30 million, is not a tax shelter under section 448(a)(3) and does not qualify as a qualified personal service corporation, as defined in paragraph (e) of this section. For the last 20 years, A used an accrual method for items of income and expenses related to purchases and sales of inventory, and

the cash method for items related to its provision of services. A is using a combination of accounting methods that include the cash method. Thus, A is subject to section 448. A is prohibited from using the cash method for any item for 2020 and is required to change to a permissible method.

(b) **Definitions.** For purposes of this section—

(1) **C corporation—(i) In general.** The term *C corporation* means any corporation that is not an S corporation (as defined in section 1361(a)(1)). For example, a regulated investment company (as defined in section 851) or a real estate investment trust (as defined in section 856) is a C corporation for purposes of this section. In addition, a trust subject to tax under section 511(b) is treated, for purposes of this section, as a C corporation, but only with respect to the portion of its activities that constitute an unrelated trade or business. Similarly, for purposes of this section, a corporation that is exempt from Federal income taxes under section 501(a) is treated as a C corporation only with respect to the portion of its activities that constitute an unrelated trade or business. Moreover, for purposes of determining whether a partnership has a C corporation as a partner, any partnership described in paragraph (a)(2)(ii) of this section is treated as a C corporation. Thus, if partnership ABC has a partner that is a partnership with a C corporation, then, for purposes of this section, partnership ABC is treated as a partnership with a C corporation partner.

(ii) [Reserved]

(2) **Tax shelter—(i) In general.** The term *tax shelter* means any—

(A) Enterprise, other than a C corporation, if at any time (including taxable years beginning before January 1, 1987) interests in such enterprise have been offered for sale in any offering required to be registered with any Federal or state agency having the authority to regulate the offering of securities for sale;

(B) Syndicate, within the meaning of paragraph (b)(2)(iii) of this section, or

(C) Tax shelter, within the meaning of section 6662(d)(2)(C).

(ii) **Requirement of registration.** For purposes of paragraph (b)(2)(i)(A) of this section, an offering is required to be registered with a Federal or state agency if, under the applicable Federal or state law, failure to register the offering would result in a violation of the applicable Federal or state law; this rule applies regardless of whether the offering is in fact registered. In addition, an offering is required to be registered with a Federal or state agency if, under

the applicable Federal or state law, failure to file a notice of exemption from registration would result in a violation of the applicable Federal or state law, regardless of whether the notice is in fact filed. However, an S corporation is not treated as a tax shelter for purposes of section 448(d)(3) or this section merely by reason of being required to file a notice of exemption from registration with a state agency described in section 461(i)(3)(A), but only if all corporations offering securities for sale in the state must file such a notice in order to be exempt from such registration.

(iii) *Syndicate*—(A) *In general.* For purposes of paragraph (b)(2)(i)(B) of this section, the term *syndicate* means a partnership or other entity (other than a C corporation) if more than 35 percent of the losses of such entity during the taxable year (for taxable years beginning after December 31, 1986) are allocated to limited partners or limited entrepreneurs. For purposes of this paragraph (b)(2)(iii), the term *limited entrepreneur* has the same meaning given such term in section 461(k)(4). In addition, in determining whether an interest in a partnership is held by a limited partner, or an interest in an entity or enterprise is held by a limited entrepreneur, section 461(k)(2) applies in the case of the trade or business of farming (as defined in paragraph (d)(2) of this section), and section 1256(e)(3)(C) applies in all other cases. Moreover, for purposes of paragraph (b)(2) of this section, the losses of a partnership, entity, or enterprise (entities) means the excess of the deductions allowable to the entities over the amount of income recognized by such entities under the entities' method of accounting used for Federal income tax purposes (determined without regard to this section). For this purpose, gains or losses from the sale of capital assets or assets described in section 1221(a)(2) are not taken into account.

(B) *Election to test the allocation of losses from prior taxable year.* For purposes of paragraph (b)(2)(iii)(A) of this section, to determine if more than 35 percent of the losses of a venture are allocated to limited partners or limited entrepreneurs, instead of using the current taxable year's allocation of losses, entities may elect to use the allocations made in the immediately preceding taxable year instead of using the current taxable year's allocation. An election under this paragraph (b)(2)(iii)(B) applies to the first taxable year for which the election is made and to all subsequent taxable years, unless the Commissioner of Internal Revenue or his delegate (Commissioner) permits

a revocation of the election in accordance with this paragraph. An election under this paragraph (b)(2)(iii)(B) may never be revoked earlier than the fifth taxable year following the first taxable year for which the election was made unless extraordinary circumstances are demonstrated to the satisfaction of the Commissioner. Once an election has been revoked, a new election under this paragraph (b)(2)(iii)(B) cannot be made until the fifth taxable year following the taxable year for which the previous election was revoked unless extraordinary circumstances are demonstrated to the satisfaction of the Commissioner. A taxpayer making this election must attach a statement to its timely filed Federal income tax return (including extension) that this election is made beginning with that taxable year. If such a statement is not attached, the election is not valid and has no effect for any purpose. No late elections will be permitted. Further, an election cannot be made by filing an amended Federal income tax return. In addition to section 448, this election also applies for purposes of all provisions of the Code that refer to section 448(a)(3) to define tax shelter. An election made under this paragraph (b)(2)(iii)(B) may only be revoked with the written consent of the Commissioner. Requests for consent must follow the applicable administrative procedures for requesting a letter ruling (for example, see Revenue Procedure 2020-1, 2020-01 IRB 1 (or its successor)).

(C) *Example.* Taxpayer B is a calendar year limited partnership, with no active management from its limited partner. In 2019, B is profitable and allocates 80 percent of its profits to its general partner and 20 percent of its profits to its limited partner. In 2020, B has a loss and allocates 60 percent of losses to its general partner and 40 percent of its losses to its limited partner. In 2020 B makes an election under paragraph (b)(2)(iii)(B) of this section to use its prior year allocated amounts. For 2020, B is not a syndicate because B is treated as having allocated 20 percent of its profits to its limited partner in 2020 for purposes of paragraph (b)(2)(iii) of this section. For 2021, B is a syndicate because B is treated as having allocated 40 percent of its losses to its limited partner for purposes of paragraph (b)(2)(iii) of this section.

(iv) *Presumed tax avoidance.* For purposes of (b)(2)(i)(C) of this section, marketed arrangements in which persons carrying on farming activities using the services of a common managerial or administrative service will be presumed to have the principal

purpose of tax avoidance if such persons use borrowed funds to prepay a substantial portion of their farming expenses (for example, payment for farm supplies that will not be used or consumed until a taxable year subsequent to the taxable year of payment).

(v) *Taxable year tax shelter must change accounting method.* A tax shelter must change from the cash method for the taxable year that it becomes a tax shelter, as determined under paragraph (b)(2) of this section.

(vi) *Determination of loss amount.* For purposes of section 448(d)(3), the amount of losses to be allocated under section 1256(e)(3)(B) is calculated without regard to section 163(j).

(c) *Exception for entities with gross receipts not in excess of the amount provided in section 448(c)*—(1) *In general.* Except in the case of a tax shelter, this section does not apply to any C corporation or partnership with a C corporation as a partner for any taxable year if such corporation or partnership (or any predecessor thereof) meets the gross receipts test of paragraph (c)(2) of this section.

(2) *Gross receipts test*—(i) *In general.* A corporation meets the gross receipts test of this paragraph (c)(2) if the average annual gross receipts of such corporation for the 3 taxable years (or, if shorter, the taxable years during which such corporation was in existence, annualized as required) ending with such prior taxable year does not exceed the gross receipts test amount provided in paragraph (c)(2)(v) of this section (section 448(c) gross receipts test). In the case of a C corporation exempt from Federal income taxes under section 501(a), or a trust subject to tax under section 511(b) that is treated as a C corporation under paragraph (b)(1) of this section, only gross receipts from the activities of such corporation or trust that constitute unrelated trades or businesses are taken into account in determining whether the gross receipts test is satisfied. A partnership with a C corporation as a partner meets the gross receipts test of paragraph (c)(2) of this section if the average annual gross receipts of such partnership for the 3 taxable years (or, if shorter, the taxable years during which such partnership was in existence annualized as required) ending with such prior year does not exceed the gross receipts test amount of paragraph (c)(2)(v) of this section. Except as provided in paragraph (c)(2)(ii) of this section, the gross receipts of the corporate partner are not taken into account in determining whether a partnership meets the gross

receipts test of paragraph (c)(2) of this section.

(ii) *Aggregation of gross receipts.* The aggregation rules in § 1.448-1T(f)(2)(ii) apply for purposes of aggregating gross receipts for purposes of this section.

(iii) *Treatment of short taxable year.* The short taxable year rules in § 1.448-1T(f)(2)(iii) apply for purposes of this section.

(iv) *Determination of gross receipts.* The determination of gross receipts rules in § 1.448-1T(f)(2)(iv) apply for purposes of this section.

(v) *Gross receipts test amount—(A) In general.* For purposes of paragraph (c) of this section, the term *gross receipts test amount* means \$25,000,000, adjusted annually for inflation in the manner provided in section 448(c)(4). The inflation adjusted gross receipts test amount is published annually in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter).

(B) *Example.* Taxpayer A, a C corporation, is a plumbing contractor that installs plumbing fixtures in customers' homes or businesses. A's gross receipts for the 2017–2019 taxable years are \$20 million, \$16 million, and \$30 million, respectively. A's average annual gross receipts for the three taxable-year period preceding the 2020 taxable year is \$22 million ( $(\$20 \text{ million} + \$16 \text{ million} + \$30 \text{ million})/3 = \$22 \text{ million}$ ). A may use the cash method for its trade or business for the 2020 taxable year because its average annual gross receipts for the preceding three taxable years is not more than the gross receipts test amount of paragraph (c)(2)(vi) of this section, which is \$26 million for 2020.

(d) *Exception for farming businesses—(1) In general.* Except in the case of a tax shelter, this section does not apply to any farming business. A taxpayer engaged in a farming business and a separate non-farming business is not prohibited by this section from using the cash method with respect to the farming business, even though the taxpayer may be prohibited by this section from using the cash method with respect to the non-farming business.

(2) *Farming business—(i) In general.* For purposes of paragraph (d) of this section, the term *farming business* means—

(A) The trade or business of farming as defined in section 263A(e)(4) (including the operation of a nursery or sod farm, or the raising or harvesting of trees bearing fruit, nuts or other crops, or ornamental trees),

(B) The raising, harvesting, or growing of trees described in section 263A(c)(5)

(relating to trees raised, harvested, or grown by the taxpayer other than trees described in paragraph (d)(2)(i)(A) of this section),

(C) The raising of timber, or

(D) Processing activities which are normally incident to the growing, raising, or harvesting of agricultural products.

(ii) *Example.* Assume a taxpayer is in the business of growing fruits and vegetables. When the fruits and vegetables are ready to be harvested, the taxpayer picks, washes, inspects, and packages the fruits and vegetables for sale. Such activities are normally incident to the raising of these crops by farmers. The taxpayer will be considered to be in the business of farming with respect to the growing of fruits and vegetables, and the processing activities incident to the harvest.

(iii) *Processing activities excluded from farming businesses—(A) In general.* For purposes of this section, a farming business does not include the processing of commodities or products beyond those activities normally incident to the growing, raising, or harvesting of such products.

(B) *Examples. (1) Example 1.* Assume that a C corporation taxpayer is in the business of growing and harvesting wheat and other grains. The taxpayer processes the harvested grains to produce breads, cereals, and similar food products which it sells to customers in the course of its business. Although the taxpayer is in the farming business with respect to the growing and harvesting of grain, the taxpayer is not in the farming business with respect to the processing of such grains to produce breads, cereals, and similar food products which the taxpayer sells to customers.

(2) *Example 2.* Assume that a taxpayer is in the business of raising livestock. The taxpayer uses the livestock in a meat processing operation in which the livestock are slaughtered, processed, and packaged or canned for sale to customers. Although the taxpayer is in the farming business with respect to the raising of livestock, the taxpayer is not in the farming business with respect to the meat processing operation.

(e) *Exception for qualified personal service corporation.* The rules in § 1.448-1T(e) relating to the exception for qualified personal service corporations apply for taxable years beginning after December 31, 2017.

(f) *Effect of section 448 on other provisions.* Except as provided in paragraph (b)(2)(iii)(B) of this section, nothing in section 448 shall have any effect on the application of any other provision of law that would otherwise

limit the use of the cash method, and no inference shall be drawn from section 448 with respect to the application of any such provision. For example, nothing in section 448 affects the requirement of section 447 that certain corporations must use an accrual method of accounting in computing taxable income from farming, or the requirement of § 1.446-1(c)(2) that, in general, an accrual method be used with regard to purchases and sales of inventory. Similarly, nothing in section 448 affects the authority of the Commissioner under section 446(b) to require the use of an accounting method that clearly reflects income, or the requirement under section 446(e) that a taxpayer secure the consent of the Commissioner before changing its method of accounting. For example, a taxpayer using the cash method may be required to change to an accrual method of accounting under section 446(b) because such method clearly reflects the taxpayer's income, even though the taxpayer is not prohibited by section 448 from using the cash method. Similarly, a taxpayer using an accrual method of accounting that is not prohibited by section 448 from using the cash method may not change to the cash method unless the taxpayer secures the consent of the Commissioner under section 446(e).

(g) *Treatment of accounting method change and rules for section 481(a) adjustment—(1) In general.* Any taxpayer to whom section 448 applies must change its method of accounting in accordance with the provisions of this paragraph (g). In the case of any taxpayer required by this section to change its method of accounting for any taxable year, the change shall be treated as a change initiated by the taxpayer. A taxpayer must change to an overall accrual method of accounting for the first taxable year the taxpayer is subject to this section or a subsequent taxable year in which the taxpayer is newly subject to this section after previously making a change in method of accounting that complies with section 448 (mandatory section 448 year). A taxpayer may have more than one mandatory section 448 year. For example, a taxpayer may exceed the gross receipts test of section 448(c) in non-consecutive taxable years. If the taxpayer complies with the provisions of paragraph (g)(3) of this section for its mandatory section 448 year, the change shall be treated as made with the consent of the Commissioner. The change shall be implemented pursuant to the applicable administrative procedures to obtain the automatic

consent of the Commissioner to change a method of accounting under section 446(e) as published in the Internal Revenue Bulletin (See Revenue Procedure 2015–13, 2015–5 IRB 419 (or successor) (see § 601.601(d)(2) of this chapter)). This paragraph (g) applies only to a taxpayer who changes from the cash method as required by this section. This paragraph (g) does not apply to a change in method of accounting required by any Code section (or applicable regulation) other than this section.

(2) *Section 481(a) adjustment.* The amount of the net section 481(a) adjustment and the adjustment period necessary to implement a change in method of accounting required under this section are determined under § 1.446–1(e) and the applicable administrative procedures to obtain the Commissioner's consent to change a method of accounting as published in the Internal Revenue Bulletin (see also § 601.601(d)(2) of this chapter).

(3) *Prior change in overall method of accounting under this section.* A taxpayer that otherwise meets the requirements of paragraph (c) of this section, and that had during any of the five taxable years ending with the taxable year changed its overall method of accounting from the cash method because it no longer met the gross receipts test of section 448(c) provided under paragraph (c) of this section or because it was a tax shelter as provided under paragraph (b)(2) of this section, may not change its overall method of accounting back to the cash method without the written consent of the Commissioner. Requests for consent must follow the applicable administrative procedures to obtain the written consent of the Commissioner to change a method of accounting under section 446(e) as published in the Internal Revenue Bulletin (see also § 601.601(d)(2) of this chapter). For rules relating to the clear reflection of income and the pattern of consistent treatment of an item, see section 446 and § 1.446–1.

(h) *Applicability dates.* The rules of this section apply for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**].

■ **Par. 16.** Newly redesignated § 1.448–3 is amended by revising paragraphs (a)(2) and (h) to read as follows:

**§ 1.448–3 Nonaccrual of certain amounts by service providers.**

(a) \* \* \*

(2) The taxpayer meets the gross receipts test of section 448(c) and

§ 1.448–1T(f)(2) (in the case of taxable years beginning before January 1, 2018), or § 1.448–2(c) (in the case of taxable years beginning after December 31, 2017) for all prior taxable years.

\* \* \* \* \*

(h) *Applicability dates.* (1) Except as provided in paragraph (h)(2) of this section, this section is applicable for taxable years ending on or after August 31, 2006. (2) The rules of paragraph (a)(2) of this section apply for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**]. For taxable years beginning before [date the Treasury Decision adopting these regulations as final is published in the **Federal Register**], see § 1.448–2 as contained in 26 CFR part 1, revised April 1, 2019.

■ **Par. 17.** Section 1.460–0 is amended by:

■ 1. Adding an entry for § 1.460–1(h)(3).

■ 2. Revising the entries for § 1.460–3(b)(3), § 1.460–3(b)(3)(i) and (ii), and adding entries for § 1.460–3(b)(3)(ii)(A), (B), (C) and (D).

■ 3. Removing the entry for § 1.460–3(b)(3)(iii).

■ 4. Adding entries for § 1.460–3(d), § 1.460–4(i), and § 1.460–6(k).

The additions and revisions read as follows:

**§ 1.460–0 Outline of regulations under section 460.**

\* \* \* \* \*

**§ 1.460–1 Long-term contracts.**

\* \* \* \* \*

(h) \* \* \*

(3) *Changes made by Tax Cuts and Jobs Act (Pub. L. 115–97).*

\* \* \* \* \*

**§ 1.460–3 Long-term construction contracts.**

\* \* \* \* \*

(b) \* \* \*

(3) Gross receipts test of section 448(c)

(i) In general

(ii) Application of gross receipts test

(A) In general

(B) Gross receipts of individuals, etc.

(C) Partners and S corporation

shareholders

(D) Examples

(1) Example 1.

(2) Example 2.

\* \* \* \* \*

(d) *Applicability dates.*

**§ 1.460–4 Methods of Accounting for long-term contracts.**

\* \* \* \* \*

(i) *Applicability date.*

\* \* \* \* \*

**§ 1.460–6 Look-back method.**

\* \* \* \* \*

(k) *Applicability date.*

**§ 1.460–1**

■ **Par. 18.** Section 1.460–1 is amended by adding three sentences to the end of paragraph (f)(3) and adding paragraph (h)(3) to read as follows:

**§ 1.460–1 Long-term contracts.**

(f) \* \* \*

(3) \* \* \* A taxpayer may adopt any permissible method of accounting for each classification of contract. Such adoption is not a change in method of accounting under section 446 and the accompanying regulations. For example, a taxpayer that has had only contracts classified as nonexempt long-term contracts and has used the PCM for these contracts may adopt an exempt contract method in the taxable year it first enters into an exempt long-term contract.

\* \* \* \* \*

(h) \* \* \*

(3) *Changes made by Tax Cuts and Jobs Act (Pub. L. 115–97).* Paragraph (f)(3) of this section, and § 1.460–5(d)(1) and (d)(3), apply for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**].

\* \* \* \* \*

■ **Par. 19.** Section 1.460–3 is amended by revising paragraphs (b)(1)(ii) and (b)(3) and adding paragraph (d) to read as follows:

**§ 1.460–3 Long-term construction contracts.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) Other construction contract, entered into after December 31, 2017, in a taxable year ending after December 31, 2017, by a taxpayer, other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting (cash method) under section 448(a)(3), who estimates at the time such contract is entered into that such contract will be completed within the 2-year period beginning on the contract commencement date, and who meets the gross receipts test described in paragraph (b)(3) of this section.

(3) *Gross receipts test of section 448(c)*—(i) *In general.* A taxpayer, other than a tax shelter prohibited from using the cash method under section 448(a)(3), satisfies the gross receipts test of this paragraph (b)(3) if it meets the gross receipts test of section 448(c) and § 1.448–2(c)(2).

(ii) *Application of gross receipts test*—(A) *In general.* In the case of any taxpayer that is not a corporation or a

partnership, and except as provided in paragraphs (b)(3)(ii)(B) and (C) of this section, the gross receipts test of section 448(c) and the accompanying regulations are applied in the same manner as if each trade or business of such taxpayer were a corporation or partnership.

(B) *Gross receipts of individuals, etc.* Except when the aggregation rules of section 448(c)(2) apply, the gross receipts of a taxpayer other than a corporation or partnership are the amount derived from all trades or businesses of such taxpayer. Amounts not related to a trade or business are excluded from the gross receipts the taxpayer. For example, an individual taxpayer's gross receipts do not include inherently personal amounts, such as personal injury awards or settlements with respect to an injury of the individual taxpayer, disability benefits, Social Security benefits received by the taxpayer during the taxable year, and wages received as an employee that are reported on Form W-2.

(C) *Partners and S corporation shareholders.* Except when the aggregation rules of section 448(c)(2) apply, each partner in a partnership includes a share of partnership gross receipts in proportion to such partner's distributive share (as determined under section 704) of items of gross income that were taken into account by the partnership under section 703. Similarly, a shareholder includes the pro rata share of S corporation gross receipts taken into account by the S corporation under section 1363(b).

(D) *Example.* The operation of this paragraph (b)(3) is illustrated by the following examples:

(1) *Example 1.* Taxpayer A is an individual who operates two separate and distinct trades or business that are reported on Schedule C, *Profit or Loss from Business*, of A's Federal income tax return. For 2020, one trade or business has annual average gross receipts of \$5 million, and the other trade or business has average annual gross receipts of \$35 million. Under paragraph (b)(3)(ii)(B) of this section, for 2020, neither of A's trades or businesses meets the gross receipts test of paragraph (b)(3) of this section (\$5 million + \$35 million = \$40 million, which is greater than the inflation-adjusted gross receipts test amount for 2020, which is \$26 million).

(2) *Example 2.* Taxpayer B is an individual who operates three separate and distinct trades or business that are reported on Schedule C of B's Federal income tax return. For 2020, Business X is a retail store with average annual gross receipts of \$15 million, Business

Y is a dance studio with average annual gross receipts of \$6 million, and Business Z is a car repair shop with average annual gross receipts of \$12 million. Under paragraph (b)(3)(ii)(B) of this section, B's gross receipts are the combined amount derived from all three of B's trades or businesses. Therefore, for 2020, X, Y and Z do not meet the gross receipts test of paragraph (b)(3)(i) of this section (\$15 million + \$6 million + \$12 million = \$33 million, which is greater than the inflation-adjusted gross receipts test amount for 2020, which is \$26 million).

(d) *Applicability Dates.* Paragraphs (b)(1)(ii) and (b)(3) of this section apply, for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**]. For contracts entered into before January 1, 2018, see § 1.460-3(b)(1)(ii) and (b)(3) as contained in 26 CFR part 1, revised April 1, 2019.

■ **Par. 20.** Section 1.460-4 is amended by revising the first sentence of paragraph (f)(1) and adding paragraph (i) to read as follows:

**§ 1.460-4 Methods of Accounting for long-term contracts.**

(f) \* \* \*

(1) \* \* \* Under section 56(a)(3), a taxpayer subject to the AMT must use the PCM to determine its AMTI from any long-term contract entered into on or after March 1, 1986, that is not a home construction contract, as defined in § 1.460-3(b)(2). \* \* \*

(i) *Applicability date.* Paragraph (f)(1) of this section applies for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**]. For taxable years beginning before January 1, 2018, see § 1.460-4(f)(1) as contained in 26 CFR part 1, revised April 1, 2019.

\* \* \* \* \*

■ **Par. 21.** Section 1.460-5 is amended:

■ 1. In paragraph (d)(1), by removing the language “(concerning contracts of homebuilders that do not satisfy the \$10,000,000 gross receipts test described in § 1.460-3(b)(3) or will not be completed within two years of the contract commencement date)”.

■ 2. By revising paragraph (d)(3).

The revision reads as follows:

**§ 1.460-5 Cost allocation rules.**

\* \* \* \* \*

(d) \* \* \*

(3) *Large homebuilders.* A taxpayer must capitalize the costs of home construction contracts under section

263A, unless the taxpayer estimates, when entering into the contract, that it will be completed within two years of the contract commencement date, and the taxpayer satisfies the gross receipts test of section 448(c) described in § 1.460-3(b)(3) for the taxable year in which the contract is entered into.

\* \* \* \* \*

■ **Par. 22.** Section 1.460-6 is amended:

■ 1. In paragraph (b)(2) introductory text, by removing the language “section 460(e)(4)” and adding in its place the language “section 460(e)(3)”.

■ 2. By revising the first and last sentences of paragraph (b)(2)(ii).

■ 3. By designating the undesignated text after paragraph (b)(3)(ii) as paragraph (b)(3)(iii).

■ 4. In newly designated paragraph (b)(3)(iii), by adding a sentence to the end of the paragraph.

■ 5. In paragraph (c)(1)(i), by revising the fifth sentence.

■ 6. In paragraph (c)(2)(i), by revising the third sentence.

■ 7. In paragraph (c)(2)(iv), by revising the first sentence.

■ 8. In paragraph (c)(3)(ii), by revising the first sentence.

■ 9. In paragraph (c)(3)(vi), by revising the first sentence.

■ 10. In paragraph (d)(2)(i), by removing the language “whether or not the taxpayer would have been subject to the alternative minimum tax” and adding in its place the language “for taxpayers subject to the alternative minimum tax without regard to whether tentative minimum tax exceeds regular tax for the redetermination year”.

■ 11. By revising paragraph (d)(4)(i)(A).

■ 12. By designating paragraph (h)(8)(ii) *Example 7* as paragraph (h)(8)(iii).

■ 13. By revising newly designated paragraph (h)(8)(iii).

■ 14. By adding paragraph (k).

The revisions and additions read as follows:

**§ 1.460-6 Look-back method.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) is not a home construction contract but is estimated to be completed within a 2-year period by a taxpayer, other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 448(a)(3), who meets the gross receipts test of section 448(c) and § 1.460-3(b)(3) for the taxable year in which such contract is entered into. \* \* \* The look-back method, however, applies to the alternative minimum taxable income from a contract of this type, for those taxpayers subject to the AMT in taxable

years prior to the filing taxable year in which the look-back method is required, unless the contract is exempt from required use of the percentage of completion method under section 56(a)(3).

(3) \* \* \*

(iii) \* \* \* For contracts entered into after December 31, 2017, in a taxable year ending after December 31, 2017, a taxpayer's gross receipts are determined in the manner required by regulations under section 448(c).

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \* Based on this reapplication, the taxpayer determines the amount of taxable income (and, when applicable, alternative minimum taxable income and modified taxable income under section 59A(c)) that would have been reported for each year prior to the filing year that is affected by contracts completed or adjusted in the filing year if the actual, rather than estimated, total contract price and costs had been used in applying the percentage of completion method to these contracts, and to any other contracts completed or adjusted in a year preceding the filing year. \* \* \*

\* \* \* \* \*

(2) \* \* \*

(i) \* \* \* The taxpayer then must determine the amount of taxable income (and, when applicable, alternative minimum taxable income and modified taxable income under section 59A(c)) that would have been reported for each affected tax year preceding the filing year if the percentage of completion method had been applied on the basis of actual contract price and contract costs in reporting income from all contracts completed or adjusted in the filing year and in any preceding year. \* \* \*

\* \* \* \* \*

(iv) \* \* \* In general, because income under the percentage of completion method is generally reported as costs are incurred, the taxable income and, when applicable, alternative minimum taxable income and modified taxable income under section 59A(c), are recomputed only for each year in which allocable contract costs were incurred. \* \* \*

\* \* \* \* \*

(3) \* \* \*

(ii) \* \* \* Under the method described in this paragraph (c)(3) (actual method), a taxpayer first must determine what its regular and, when applicable, its alternative minimum tax and base erosion minimum tax liability would have been for each redetermination year if the amounts of

contract income allocated in Step One for all contracts completed or adjusted in the filing year and in any prior year were substituted for the amounts of contract income reported under the percentage of completion method on the taxpayer's original return (or as subsequently adjusted on examination, or by amended return). \* \* \*

\* \* \* \* \*

(vi) \* \* \* For purposes of Step Two, the income tax liability must be redetermined by taking into account all applicable additions to tax, credits, and net operating loss carrybacks and carryovers. Thus, the taxes, if any, imposed under sections 55 and 59A (relating to alternative and base erosion minimum tax, respectively) must be taken into account. \* \* \*

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(i) \* \* \*

(A) *General rule.* The simplified marginal impact method is required to be used with respect to income reported from domestic contracts by a pass-through entity that is either a partnership, an S corporation, or a trust, and that is not closely held. With respect to contracts described in the preceding sentence, the simplified marginal impact method is applied by the pass-through entity at the entity level. The pass-through entity determines the amount of any hypothetical underpayment or overpayment for a redetermination year using the highest rate of tax in effect for corporations under section 11. However, for redetermination years beginning before January 1, 2018, the pass-through entity uses the highest rates of tax in effect for corporations under section 11 and section 55(b)(1). Further, the pass-through entity uses the highest rates of tax imposed on individuals under section 1 and section 55(b)(1) if, at all times during the redetermination year involved (that is, the year in which the hypothetical increase or decrease in income arises), more than 50 percent of the interests in the entity were held by individuals directly or through 1 or more pass-through entities. \* \* \*

\* \* \* \* \*

(h) \* \* \*

(8) \* \* \*

(iii) *Example 7.* X, a calendar year C corporation, is engaged in the construction of real property under contracts that are completed within a 24-month period. Its average annual gross receipts for the prior 3-taxable-year period does not exceed \$25,000,000. As permitted by section 460(e)(1)(B), X uses the completed

contract method (CCM) for regular tax purposes. However, X is engaged in the construction of commercial real property and, for years beginning before January 1, 2018, is required to use the percentage of completion method (PCM) for alternative minimum tax (AMT) purposes. Assume that for 2017, 2018, and 2019, X has only one long-term contract, which is entered into in 2017 and completed in 2019 and that in 2017 X's average annual gross receipts for the prior 3-taxable-years do not exceed \$10,000,000. Assume further that X estimates gross income from the contract to be \$2,000, total contract costs to be \$1,000, and that the contract is 25 percent complete in 2017 and 70 percent complete in 2018, and 5 percent complete in 2019. In 2019, the year of completion, gross income from the contract is actually \$3,000, instead of \$2,000, and costs are actually \$1,000. Because X was required to use the PCM for 2017 for AMT purposes, X must apply the look-back method to its AMT reporting for that year. X has elected to use the simplified marginal impact method. For 2017, X's income using estimated contract price and costs is as follows:

TABLE 1 TO PARAGRAPH (h)(8)(III)

Estimates .....	2017
Gross Income .....	\$500 = (\$2,000 × 25%)
Deductions .....	\$(250) = (\$1,000 × 25%)
Contract Income—PCM.	\$250

(A) When X files its federal income tax return for 2019, the contract completion year, X applies the look-back method. For 2017, X's income using actual contract price and costs is as follows:

TABLE 2 TO PARAGRAPH (h)(8)(III)(A)

Actual .....	2017
Gross Income .....	\$750 = (\$3,000 × 25%)
Deductions .....	\$(250) = (\$1,000 × 25%)
Contract Income—PCM.	\$500

(B) Accordingly, the reallocation of contract income under the look-back method results in an increase of income for AMT purposes for 2017 of \$250 (\$500 – \$250). Under the simplified marginal impact method, X applies the highest rate of tax under section 55(b)(1) to this increase, which produces a hypothetical underpayment for 2017 of \$50 (.20 × \$250). Interest is charged to X on this \$50 underpayment from the

due date of X's 2017 return until the due date of X's 2019 return. X, a C corporation, is not subject to the AMT in 2018. X does not compute alternative minimum taxable income or use the PCM in that year. Accordingly, look-back does not apply to 2018.

\* \* \* \* \*

(k) *Applicability date.* Paragraphs (b)(2), (b)(2)(ii), (b)(3)(ii), (c)(1)(i), (c)(2)(i), (c)(2)(iv), (c)(3)(ii), (c)(3)(vi), (d)(2)(i), (d)(4)(i)(A), and (h)(8)(iii) of this section, apply for taxable years beginning on or after [date the Treasury decision adopting these proposed regulations as final is published in the **Federal Register**]. For taxable years beginning before January 1, 2018, see §§ 1.460–6(b)(2), 1.460–6(b)(2)(ii), 1.460–6(b)(3)(ii), 1.460–6(c)(1)(i), 1.460–6(c)(2)(i) and (iv), 1.460–6(c)(3)(ii) and (vi), 1.460–6(d)(2)(i), 1.460–6(d)(4)(i)(A), and 1.460–6(h)(8)(iii) as contained in 26 CFR part 1, revised April 1, 2019.

■ **Par. 23.** § 1.471–1 is amended by:

- 1. Designating the undesignated paragraph as paragraph (a).
- 2. Adding a heading to newly designated paragraph (a) and revising the first sentence.
- 3. Adding paragraph (b).

The revision and addition read as follows:

**§ 1.471–1 Need for inventories.**

(a) *In general.* Except as provided in paragraph (b) of this section, in order to reflect taxable income correctly, inventories at the beginning and end of each taxable year are necessary in every case in which the production, purchase, or sale of merchandise is an income-producing factor. \* \* \*

(b) *Exemption for certain small business taxpayers—(1) In general.* Paragraph (a) of this section shall not apply to a taxpayer, other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting (cash method) under section 448(a)(3), in any taxable year if the taxpayer meets the gross receipts test provided in paragraph (b)(2) of this section, and uses as a method of accounting for its inventory a method that is described in paragraph (b)(3) of this section.

(2) *Gross receipts test—(i) In general.* A taxpayer, other than a tax shelter prohibited from using the cash method under section 448(a)(3), meets the gross receipts test of paragraph (b)(1) of this section if it meets the gross receipts test of section 448(c) and § 1.448–2(c). The gross receipts test applies to determine whether a taxpayer is eligible to use the exemption provided in paragraph (b) of this section even if the taxpayer is not otherwise subject to section 448(a).

(ii) *Application of the gross receipts test—(A) In general.* In the case of any taxpayer that is not a corporation or partnership, and except as otherwise provided in paragraphs (b)(2)(ii)(B) and (C) of this section, the gross receipts test of section 448(c) and the accompanying regulations are applied in the same manner as each trade or business of the taxpayer were a corporation or partnership.

(B) *Gross receipts of individuals, etc.* Except when the aggregation rules of section 448(c)(2) apply, the gross receipts of a taxpayer other than a corporation or partnership are the amount derived from all trades or businesses of such taxpayer. Amounts not related to a trade or businesses are excluded from the gross receipts of the taxpayer. For example, an individual taxpayer's gross receipts do not include inherently personal amounts, such as: personal injury awards or settlements with respect to an injury of the individual taxpayer, disability benefits, Social Security benefits received by the taxpayer during the taxable year, and wages received as an employee that are reported on Form W–2.

(C) *Partners and S corporation shareholders—(1) In general.* Except when the aggregation rules of section 448(c)(2) apply, each partner in a partnership includes a share of the partnership's gross receipts in proportion to such partner's distributive share (as determined under section 704) of items of gross income that were taken into account by the partnership under section 703. Similarly, a shareholder includes the *pro rata* share of S corporation gross receipts taken into account by the S corporation under section 1363(b).

(2) [Reserved]

(D) *Examples.* The operation of this paragraph (b)(2) is illustrated by the following examples:

(1) *Example 1.* Taxpayer A, a calendar year S corporation, is a reseller and maintains inventories. In 2017, 2018, and 2019, S's gross receipts were \$10 million, \$11 million, and \$13 million respectively. A is not prohibited from using the cash method under section 448(a)(3). For 2020, A meets the gross receipts test of paragraph (b)(2) of this section.

(2) *Example 2.* Taxpayer B operates two separate and distinct trades or businesses that are reported on Schedule C, *Profit or Loss from Business*, of B's Federal income tax return. For 2020, one trade or business has annual average gross receipts of \$5 million, and the other trade or business has average annual gross receipts of \$35 million. Under paragraph (b)(2)(ii)(B) of

this section, for 2020, neither of B's trades or businesses meets the gross receipts test of paragraph (b)(2) of this section (\$5 million + \$35 million = \$40 million, which is greater than the inflation-adjusted gross receipts test amount for 2020, which is \$26 million).

(3) *Example 3.* Taxpayer C is an individual who operates three separate and distinct trades or business that are reported on Schedule C of C's Federal income tax return. For 2020, Business X is a retail store with average annual gross receipts of \$15 million, Business Y is a dance studio with average annual gross receipts of \$6 million, and Business Z is a car repair shop with average annual gross receipts of \$12 million. Under paragraph (b)(2)(ii)(B) of this section, C's gross receipts are the combined amount derived from all three of C's trades or businesses. Therefore, for 2020, X, Y and Z do not meet the gross receipts test of paragraph (b)(2)(i) of this section (\$15 million + \$6 million + \$12 million = \$33 million, which is greater than the inflation-adjusted gross receipts test amount for 2020, which is \$26 million).

(3) *Methods of accounting under the small business taxpayer exemption.* A taxpayer eligible to use, and that chooses to use, the exemption described in paragraph (b) of this section may account for its inventory by either:

(i) Accounting for its inventory items as non-incidental materials and supplies, as described in paragraph (b)(4) of this section; or

(ii) Using the method for each item that is reflected in the taxpayer's applicable financial statement (AFS) (AFS section 471(c) inventory method); or, if the taxpayer does not have an AFS for the taxable year, the books and records of the taxpayer prepared in accordance with the taxpayer's accounting procedures, as defined in paragraph (b)(6)(ii) of this section (non-AFS section 471(c) inventory method).

(4) *Inventory treated as non-incidental materials and supplies—(i) In general.* Inventory treated as non-incidental materials and supplies (section 471(c) materials and supplies) is recovered through costs of goods sold only in the taxable year in which such inventory is actually used or consumed in the taxpayer's business, or in the taxable year in which the taxpayer pays for or incurs the costs of the items, whichever is later. Section 471 materials and supplies are used or consumed in the taxable year in which the taxpayer provides the items to its customer. Inventory treated as non-incidental materials and supplies under this paragraph (b)(4) is not eligible for the de

minimis safe harbor election under § 1.263(a)–1(f)(2).

(ii) *Identification and valuation of section 471(c) materials and supplies.* A taxpayer may determine the amount of the section 471(c) materials and supplies that are recoverable through costs of goods sold by using either a specific identification method, a first-in, first-out (FIFO) method, or an average cost method, provided that method is used consistently. See § 1.471–2(d). A taxpayer that uses the section 471 materials and supplies method may not use any other method described in the regulations under section 471, or the last-in, first-out (LIFO) method described in section 472 and the accompanying regulations, to either identify section 471(c) materials and supplies, or to value those section 471(c) materials and supplies. The inventory costs includible in the section 471(c) materials and supplies method are the direct costs of the property produced or property acquired for resale. However, an inventory cost does not include a cost for which a deduction would be disallowed, or that is not otherwise recoverable but for paragraph (b)(4) of this section, in whole or in part, under a provision of the Internal Revenue Code.

(iii) *Allocation methods.* The section 471 materials and supplies method may allocate the costs of such inventory items by using specific identification or using any reasonable method.

(iv) *Example.* Taxpayer D is a baker that reports its baking trade or business on Schedule C, *Profit or Loss From Business*, of the Form 1040, *Individual Tax Return*, and D's baking business has average annual gross receipts for the 3-taxable years prior to 2019 of less than \$100,000. D meets the gross receipts test of section 448(c) and is not prohibited from using the cash method under section 448(a)(3) in 2019. Therefore, D qualifies as a small business taxpayer under paragraph (b)(2) of this section. D uses the overall cash method, and the section 471(c) non-incidental materials and supplies method. D purchases \$50 of peanut butter in November 2019. In December 2019, D uses all of the peanut butter to bake cookies available for immediate sale. D sells the peanut butter cookies to customers in January 2020. The peanut butter cookies are used or consumed under paragraph (b)(4)(i) of this section in January 2020 when the cookies are sold to customers, and D may recover the cost of the peanut butter in 2020.

(5) *AFS section 471(c) method—(i) In general.* A taxpayer that meets the gross receipts test described in paragraph (b)(2) of this section and that has an

AFS for such taxable year may use the AFS section 471(c) method described in this paragraph to account for its inventory costs for the taxable year. For purposes of the AFS section 471(c) method, an inventory cost is a cost that a taxpayer capitalizes to property produced or property acquired for resale in its AFS. However, an inventory cost does not include a cost that is neither deductible nor otherwise recoverable but for paragraph (b)(5) of this section, in whole or in part, under a provision of the Internal Revenue Code (for example, section 162(c), (e), (f), (g), or 274). In lieu of the inventory method described in section 471(a), a taxpayer using the AFS section 471(c) method recovers its inventory costs in accordance with the inventory method used in its AFS.

(ii) *Definition of AFS.* The term AFS is defined in section 451(b)(3) and the accompanying regulations. See § 1.451–3(c)(1). The rules relating to additional AFS issues provided in § 1.451–3(h) apply to the AFS section 471(c) method. A taxpayer has an AFS for the taxable year if all of the taxpayer's taxable year is covered by an AFS.

(iii) *Timing of inventory costs.* Notwithstanding the timing rules used in the taxpayer's AFS, the amount of any inventoriable cost may not be capitalized or otherwise taken into account for Federal income tax purposes any earlier than the taxable year during which the amount is paid or incurred under the taxpayer's overall method of accounting, as described in § 1.446–1(c)(1). For example, in the case of an accrual method taxpayer, inventoriable costs must satisfy the all events test, including economic performance, of section 461. See § 1.446–1(c)(1)(ii) and section 461 and the accompanying regulations.

(iv) *Example.* H is a calendar year C corporation that is engaged in the trade or business of selling office supplies and providing copier repair services. H meets the gross receipts test of section 448(c) and is not prohibited from using the cash method under section 448(a)(3) for 2019 or 2020. For Federal income tax purposes, H chooses to account for purchases and sales of inventory using an accrual method of accounting and for all other items using the cash method. For AFS purposes, H uses an overall accrual method of accounting. H uses the AFS section 471(c) method of accounting. In H's 2019 AFS, H incurred \$2 million in purchases of office supplies held for resale and recovered the \$2 million as cost of goods sold. On January 5, 2020, H makes payment on \$1.5 million of these office supplies. For purposes of the AFS section 471(c)

method of accounting, H can recover the \$2 million of office supplies in 2019 because the amount has been included in cost of goods sold in its AFS inventory method and section 461 has been satisfied.

(6) *Non-AFS section 471(c) method—(i) In general.* A taxpayer that meets the gross receipts test described in paragraph (b)(2) of this section for a taxable year and that does not have an AFS, as defined in paragraph (b)(5)(ii) of this section, for such taxable year may use the non-AFS section 471(c) method to account for its inventories for the taxable year in accordance with this paragraph (b)(6). The non-AFS section 471(c) method is the method of accounting used for inventory in the taxpayer's books and records that properly reflect its business activities for non-tax purposes and are prepared in accordance with the taxpayer's accounting procedures. For purposes of the non-AFS section 471(c) method, an inventory cost is a cost that the taxpayer capitalizes to property produced or property acquired for resale in its books and records, except as provided in paragraph (b)(6)(ii) of this section. In lieu of the inventory method described in section 471(a), a taxpayer using the non-AFS section 471(c) method recovers its costs through its book inventory method of accounting. A taxpayer that has an AFS for such taxable year may not use the non-AFS section 471(c) method.

(ii) *Timing and amounts of costs.* Notwithstanding the timing of costs reflected in the taxpayer's books and records, a taxpayer may not deduct or recover any costs that have not been paid or incurred under the taxpayer's overall method of accounting, as described in § 1.446–1(c)(1), or that are neither deductible nor otherwise recoverable but for the application of this paragraph (b)(6), in whole or in part, under a provision of the Internal Revenue Code (for example, section 162(c), (e), (f), (g) or 274). For example, in the case of an accrual method taxpayer or a taxpayer using an accrual method for purchases and sales, inventory costs must satisfy the all events test, including economic performance, under section 461(h). See § 1.446–1(c)(1)(ii), and section 461 and the accompanying regulations.

(iii) *Examples.* The following examples illustrate the rules of paragraph (b)(6) of this section.

(A) *Example 1.* Taxpayer E is a C corporation that is engaged in the retail trade or business of selling beer, wine, and liquor. In 2019, E has average annual gross receipts for the prior 3-taxable-years of less than \$15 million,

and is not otherwise prohibited from using the cash method under section 448(a)(3). E does not have an AFS for the 2019 taxable year. E is eligible to use the non-AFS section 471(c) method of accounting. E uses the overall cash method, and the non-AFS section 471(c) method of accounting for Federal income tax purposes. In E's electronic bookkeeping software, E treats all costs paid during the taxable year as presently deductible. As part of its regular business practice, E's employees take a physical count of inventory on E's selling floor and its warehouse on December 31, 2019, and E also makes representations to its creditor of the amount of inventory on hand for specific categories of product it sells. E may not expense all of its costs paid during the 2019 taxable year because its books and records do not accurately reflect the inventory records used for non-tax purposes in its regular business activity. E must use the physical inventory count taken at the end of 2019 to determine its ending inventory. E may include in cost of goods sold for 2019 those inventory costs that are not properly allocated to ending inventory.

(B) *Example 2.* F is a C corporation that is engaged in the manufacture of baseball bats. In 2019, F has average annual gross receipts for the prior 3-taxable-years of less than \$25 million, and is not otherwise prohibited from using the cash method under section 448(a)(3). F does not have an AFS for the 2019 taxable year. For Federal

income tax purposes, F uses the overall cash method of accounting, and the non-AFS section 471(c) method of accounting. For its books and records, F uses an overall accrual method and maintains inventories. In December 2019, F's financial statements show \$500,000 of direct and indirect material costs. F pays its supplier in January 2020. Under paragraph (b)(6)(ii) of this section, F recovers its direct and indirect material costs in 2020.

(7) *Effect of section 471(c) on other provisions.* Nothing in section 471(c) shall have any effect on the application of any other provision of law that would otherwise apply, and no inference shall be drawn from section 471(c) with respect to the application of any such provision. For example, a taxpayer that includes inventory costs in its AFS is required to satisfy section 461 before such cost can be included in cost of goods sold for the taxable year. Similarly, nothing in section 471(c) affects the requirement under section 446(e) that a taxpayer secure the consent of the Commissioner before changing its method of accounting. If an item of income or expense is not treated consistently from year to year, that treatment may not clearly reflect income, notwithstanding the application of this section.

(8) *Method of accounting.* A change in the method of treating inventory under this paragraph (b) is a change in method of accounting under section 446 and the accompanying regulations. A taxpayer

may change its method of accounting only with the consent of the Commissioner as required under section 446(e) and § 1.446-1. For example, if a taxpayer is using the AFS section 471(c) method or non-AFS section 471(c) method, and that taxpayer changes the method of accounting for inventory in its AFS, or its books and records, respectively, is required to secure the consent of the Commissioner before using this new method for Federal income tax purposes. However, a change from having an AFS to not having an AFS, or vice versa, without a change in the underlying method for inventory for financial reporting purposes is not a change in method of accounting under section 446(e). For rules relating to the clear reflection of income and the pattern of consistent treatment of an item, see section 446 and § 1.446-1.

(c) *Applicability dates.* This section applies for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**]. For taxable years beginning before January 1, 2018, see § 1.471-1 as contained in 26 CFR part 1, revised April 1, 2019.

**Sunita Lough,**

*Deputy Commissioner of Services and Enforcement.*

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