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## **Reg. Section 1.263(a)-1(f)(1)(ii)(B)** Capital expenditures in general

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### **(f) De minimis safe harbor election.**

*(1) In general.* Except as otherwise provided in paragraph (f)(2) of this section, a taxpayer electing to apply the de minimis safe harbor under this paragraph (f) may not capitalize under §1.263(a)-2(d)(1) or §1.263(a)-3(d) any amount paid in the taxable year for the acquisition or production of a unit of tangible property nor treat as a material or supply under §1.162-3(a) any amount paid in the taxable year for tangible property if the amount specified under this paragraph (f)(1) meets the requirements of paragraph (f)(1)(i) or (f)(1)(ii) of this section. However, section 263A and the regulations under section 263A require taxpayers to capitalize the direct and allocable indirect costs of property produced by the taxpayer (for example, property improved by the taxpayer) and property acquired for resale.

(i) Taxpayer with applicable financial statement. A taxpayer electing to apply the de minimis safe harbor may not capitalize under §1.263(a)-2(d)(1) or §1.263(a)-3(d) nor treat as a material or supply under §1.162-3(a) any amount paid in the taxable year for property described in paragraph (f)(1) of this section if-

(A) The taxpayer has an applicable financial statement (as defined in paragraph (f)(4) of this section);

(B) The taxpayer has at the beginning of the taxable year written accounting procedures treating as an expense for non-tax purposes-

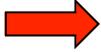
(1) Amounts paid for property costing less than a specified dollar amount; or

(2) Amounts paid for property with an economic useful life (as defined in §1.162-3(c)(4)) of 12 months or less;

(C) The taxpayer treats the amount paid for the property as an expense on its applicable financial statement in accordance with its written accounting procedures; and

(D) The amount paid for the property does not exceed \$5,000 per invoice (or per item as substantiated by the invoice) or other amount as identified in published guidance in the Federal Register or in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter).

(ii) Taxpayer without applicable financial statement. A taxpayer electing to apply the de minimis safe harbor may not capitalize under §1.263(a)-2(d)(1) or §1.263(a)-3(d) nor treat as a material or supply under §1.162-3(a) any amount paid in the taxable year for property described in paragraph (f)(1) of this section if-



(A) The taxpayer does not have an applicable financial statement (as defined in paragraph (f)(4) of this section);

(B) The taxpayer has at the beginning of the taxable year accounting procedures treating as an expense for non-tax purposes-

(1) Amounts paid for property costing less than a specified dollar amount; or

(2) Amounts paid for property with an economic useful life (as defined in §1.162-3(c)(4)) of 12 months or less;

(C) The taxpayer treats the amount paid for the property as an expense on its books and records in accordance with these accounting procedures; and

(D) The amount paid for the property does not exceed \$500 per invoice (or per item as substantiated by the invoice) or other amount as identified in published guidance in the Federal Register or in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter).

(iii) Taxpayer with both an applicable financial statement and a non-qualifying financial statement. For purposes of this paragraph (f)(1), if a taxpayer has an applicable financial statement defined in paragraph (f)(4) of this section in addition to a financial statement that does not meet requirements of paragraph (f)(4) of this section, the taxpayer must meet the requirements of paragraph (f)(1)(i) of this section to qualify to elect the de minimis safe harbor under this paragraph (f).

(2) *Exceptions to de minimis safe harbor.* The de minimis safe harbor in paragraph (f)(1) of this section does not apply to the following:

(i) Amounts paid for property that is or is intended to be included in inventory property;

(ii) Amounts paid for land;

(iii) Amounts paid for rotatable, temporary, and standby emergency spare parts that the taxpayer elects to capitalize and depreciate under §1.162-3(d); and

(iv) Amounts paid for rotatable and temporary spare parts that the taxpayer accounts for under the optional method of accounting for rotatable parts pursuant to §1.162-3(e).

(3) *Additional rules.*

(i) *Transaction and other additional costs.* A taxpayer electing to apply the de minimis safe harbor under paragraph (f)(1) of this section is not required to include in the cost of the tangible property the additional costs of acquiring or producing such property if these costs are not included in the same invoice as the tangible property. However, the taxpayer electing to apply the de minimis safe harbor under paragraph (f)(1) of this section must include in the cost of such property all additional costs (for example, delivery fees, installation services, or similar costs) if these additional costs are included on the same invoice with the tangible property. For purposes of this paragraph, if the invoice includes amounts paid for multiple tangible properties and such invoice includes additional invoice costs related to these multiple properties, then the taxpayer must allocate the

additional invoice costs to each property using a reasonable method, and each property, including allocable labor and overhead, must meet the requirements of paragraph (f)(1)(i) or paragraph (f)(1)(ii) of this section, whichever is applicable. Reasonable allocation methods include, but are not limited to specific identification, a pro rata allocation, or a weighted average method based on the property's relative cost. For purposes of this paragraph (f)(3)(i), additional costs consist of the costs of facilitating the acquisition or production of such tangible property under § 1.263(a)-2(f) and the costs for work performed prior to the date that the tangible property is placed in service under § 1.263(a)-2(d).

(ii) Materials and supplies. If a taxpayer elects to apply the de minimis safe harbor provided under this paragraph (f), then the taxpayer must also apply the de minimis safe harbor to amounts paid for all materials and supplies (as defined under § 1.162-3) that meet the requirements of § 1.263(a)-1(f). See paragraph (f)(3)(iv) of this section for treatment of materials and supplies under the de minimis safe harbor.

(iii) Sale or disposition. Property to which a taxpayer applies the de minimis safe harbor contained in this paragraph (f) is not treated upon sale or other disposition as a capital asset under section 1221 or as property used in the trade or business under section 1231.

(iv) Treatment of de minimis amounts. An amount paid for property to which a taxpayer properly applies the de minimis safe harbor contained in this paragraph (f) is not treated as a capital expenditure under § 1.263(a)-2(d)(1) or § 1.263(a)-3(d) or as a material and supply under § 1.162-3, and may be deducted under § 1.162-1 in the taxable year the amount is paid provided the amount otherwise constitutes an ordinary and necessary expense incurred in carrying on a trade or business.

(v) Coordination with section 263A. Amounts paid for tangible property described in paragraph (f)(1) of this section may be subject to capitalization under section 263A if the amounts paid for tangible property comprise the direct or allocable indirect costs of other property produced by the taxpayer or property acquired for resale. See, for example, § 1.263A-1(e)(3)(ii)(R) requiring taxpayers to capitalize the cost of tools and equipment allocable to property produced or property acquired for resale.

(vi) Written accounting procedures for groups of entities. If the taxpayer's financial results are reported on the applicable financial statement (as defined in paragraph (f)(4) of this section) for a group of entities then, for purposes of paragraph (f)(1)(i)(A) of this section, the group's applicable financial statement may be treated as the applicable financial statement of the taxpayer, and for purposes of paragraphs (f)(1)(i)(B) and (f)(1)(i)(C) of this section, the written accounting procedures provided for the group and utilized for the group's applicable financial statement may be treated as the written accounting procedures of the taxpayer.

(vii) Combined expensing accounting procedures. For purposes of paragraphs (f)(1)(i) and (f)(1)(ii) of this section, if the taxpayer has, at the beginning of the taxable year, accounting procedures treating as an expense for non-tax purposes amounts paid for property costing less than a specified dollar amount and amounts

paid for property with an economic useful life (as defined in §1.162-3(c)(4)) of 12 months or less, then a taxpayer electing to apply the de minimis safe harbor under this paragraph (f) must apply the provisions of this paragraph (f) to amounts qualifying under either accounting procedure.

*(4) Definition of applicable financial statement.* For purposes of this paragraph (f), the taxpayer's applicable financial statement (AFS) is the taxpayer's financial statement listed in paragraphs (f)(4)(i) through (iii) of this section that has the highest priority (including within paragraph (f)(4)(ii) of this section). The financial statements are, in descending priority-

(i) A financial statement required to be filed with the Securities and Exchange Commission (SEC) (the 10-K or the Annual Statement to Shareholders);

(ii) A certified audited financial statement that is accompanied by the report of an independent certified public accountant (or in the case of a foreign entity, by the report of a similarly qualified independent professional) that is used for-

(A) Credit purposes;

(B) Reporting to shareholders, partners, or similar persons; or

(C) Any other substantial non-tax purpose; or

(iii) A financial statement (other than a tax return) required to be provided to the federal or a state government or any federal or state agency (other than the SEC or the Internal Revenue Service).

*(5) Time and manner of election.* A taxpayer that makes the election under this paragraph (f) must make the election for all amounts paid during the taxable year for property described in paragraph (f)(1) of this section and meeting the requirements of paragraph (f)(1)(i) or paragraph (f)(1)(ii) of this section, as applicable. A taxpayer makes the election by attaching a statement to the taxpayer's timely filed original Federal tax return (including extensions) for the taxable year in which these amounts are paid. Sections 301.9100-1 through 301.9100-3 of this chapter provide the rules governing extensions of the time to make regulatory elections. The statement must be titled "Section 1.263(a)-1(f) de minimis safe harbor election" and include the taxpayer's name, address, taxpayer identification number, and a statement that the taxpayer is making the de minimis safe harbor election under §1.263(a)-1(f). In the case of a consolidated group filing a consolidated income tax return, the election is made for each member of the consolidated group by the common parent, and the statement must also include the names and taxpayer identification numbers of each member for which the election is made. In the case of an S corporation or a partnership, the election is made by the S corporation or the partnership and not by the shareholders or partners. An election may not be made through the filing of an application for change in accounting method or, before obtaining the Commissioner's consent to make a late election, by filing an amended Federal tax return. A taxpayer may not revoke an election made under this paragraph (f). The manner of electing the de minimis safe harbor under this paragraph (f) may be modified through guidance of general applicability (see §§601.601(d)(2) and 601.602 of this chapter).

*(6) Anti-abuse rule.* If a taxpayer acts to manipulate transactions with the intent to achieve a tax benefit or to avoid the application of the limitations provided under paragraphs (f)(1)(i)(B)(1), (f)(1)(i)(D), (f)(1)(ii)(B)(1), and (f)(1)(ii)(D) of this section, appropriate adjustments will be made to carry out the purposes of this section. For example, a

taxpayer is deemed to act to manipulate transactions with an intent to avoid the purposes and requirements of this section if-

- (i) The taxpayer applies the de minimis safe harbor to amounts substantiated with invoices created to componentize property that is generally acquired or produced by the taxpayer (or other taxpayers in the same or similar trade or business) as a single unit of tangible property; and
- (ii) This property, if treated as a single unit, would exceed any of the limitations provided under paragraphs (f)(1)(i)(B)(1), (f)(1)(i)(D), (f)(1)(ii)(B)(1), and (f)(1)(ii)(D) of this section, as applicable.

(7) *Examples.* The following examples illustrate the application of this paragraph (f). Unless otherwise provided, assume that section 263A does not apply to the amounts described.

*Example (1).* De minimis safe harbor; taxpayer without AFS. In Year 1, A purchases 10 printers at \$250 each for a total cost of \$2,500 as indicated by the invoice. Assume that each printer is a unit of property under §1.263(a)-3(e). A does not have an AFS. A has accounting procedures in place at the beginning of Year 1 to expense amounts paid for property costing less than \$500, and A treats the amounts paid for the printers as an expense on its books and records. The amounts paid for the printers meet the requirements for the de minimis safe harbor under paragraph (f)(1)(ii) of this section. If A elects to apply the de minimis safe harbor under this paragraph (f) in Year 1, A may not capitalize the amounts paid for the 10 printers or any other amounts meeting the criteria for the de minimis safe harbor under paragraph (f)(1). Instead, in accordance with paragraph (f)(3)(iv) of this section, A may deduct these amounts under §1.162-1 in the taxable year the amounts are paid provided the amounts otherwise constitute deductible ordinary and necessary expenses incurred in carrying on a trade or business.

*Example (2).* De minimis safe harbor; taxpayer without AFS. In Year 1, B purchases 10 computers at \$600 each for a total cost of \$6,000 as indicated by the invoice. Assume that each computer is a unit of property under §1.263(a)-3(e). B does not have an AFS. B has accounting procedures in place at the beginning of Year 1 to expense amounts paid for property costing less than \$1,000 and B treats the amounts paid for the computers as an expense on its books and records. The amounts paid for the printers do not meet the requirements for the de minimis safe harbor under paragraph (f)(1)(ii) of this section because the amount paid for the property exceeds \$500 per invoice (or per item as substantiated by the invoice). B may not apply the de minimis safe harbor election to the amounts paid for the 10 computers under paragraph (f)(1) of this section.

*Example (3).* De minimis safe harbor; taxpayer with AFS. C is a member of a consolidated group for Federal income tax purposes. C's financial results are reported on the consolidated applicable financial statements for the affiliated group. C's affiliated group has a written accounting policy at the beginning of Year 1, which is followed by C, to expense amounts paid for property costing \$5,000 or less. In Year 1, C pays \$6,250,000 to purchase 1,250 computers at \$5,000 each. C receives an invoice from its supplier indicating the total amount due (\$6,250,000) and the price per item (\$5,000). Assume that each computer is a

unit of property under § 1.263(a)-3(e). The amounts paid for the computers meet the requirements for the de minimis safe harbor under paragraph (f)(1)(i) of this section. If C elects to apply the de minimis safe harbor under this paragraph (f) for Year 1, C may not capitalize the amounts paid for the 1,250 computers or any other amounts meeting the criteria for the de minimis safe harbor under paragraph (f)(1) of this section. Instead, in accordance with paragraph (f)(3)(iv) of this section, C may deduct these amounts under §1.162-1 in the taxable year the amounts are paid provided the amounts otherwise constitute deductible ordinary and necessary expenses incurred in carrying on a trade or business.

*Example (4).* De minimis safe harbor; taxpayer with AFS. D is a member of a consolidated group for Federal income tax purposes. D's financial results are reported on the consolidated applicable financial statements for the affiliated group. D's affiliated group has a written accounting policy at the beginning of Year 1, which is followed by D, to expense amounts paid for property costing less than \$15,000. In Year 1, D pays \$4,800,000 to purchase 800 elliptical machines at \$6,000 each. D receives an invoice from its supplier indicating the total amount due (\$4,800,000) and the price per item (\$6,000). Assume that each elliptical machine is a unit of property under §1.263(a)-3(e). D may not apply the de minimis safe harbor election to the amounts paid for the 800 elliptical machines under paragraph (f)(1) of this section because the amount paid for the property exceeds \$5,000 per invoice (or per item as substantiated by the invoice).

*Example (5).* De minimis safe harbor; additional invoice costs. E is a member of a consolidated group for Federal income tax purposes. E's financial results are reported on the consolidated applicable financial statements for the affiliated group. E's affiliated group has a written accounting policy at the beginning of Year 1, which is followed by E, to expense amounts paid for property costing less than \$5,000. In Year 1, E pays \$45,000 for the purchase and installation of wireless routers in each of its 10 office locations. Assume that each wireless router is a unit of property under § 1.263(a)-3(e). E receives an invoice from its supplier indicating the total amount due (\$45,000), including the material price per item (\$2,500), and total delivery and installation (\$20,000). E allocates the additional invoice costs to the materials on a pro rata basis, bringing the cost of each router to \$4,500 (\$2,500 materials + \$2,000 labor and overhead). The amounts paid for each router, including the allocable additional invoice costs, meet the requirements for the de minimis safe harbor under paragraph (f)(1)(i) of this section. If E elects to apply the de minimis safe harbor under this paragraph (f) for Year 1, E may not capitalize the amounts paid for the 10 routers (including the additional invoice costs) or any other amounts meeting the criteria for the de minimis safe harbor under paragraph (f)(1) of this section. Instead, in accordance with paragraph (f)(3)(iv) of this section, E may deduct these amounts under §1.162-1 in the taxable year the amounts are paid provided the amounts otherwise constitute deductible ordinary and necessary expenses incurred in carrying on a trade or business.

*Example (6).* De minimis safe harbor; non-invoice additional costs. F is a corporation that provides consulting services to its customer. F does not have an AFS, but F has accounting procedures in place at the beginning of Year 1 to expense amounts paid for property costing less than \$500. In Year 1, F pays \$600 to an interior designer to shop for, evaluate, and make recommendations

regarding purchasing new furniture for F's conference room. As a result of the interior designer's recommendations, F acquires a conference table for \$500 and 10 chairs for \$300 each. In Year 1, F receives an invoice from the interior designer for \$600 for his services, and F receives a separate invoice from the furniture supplier indicating a total amount due of \$500 for the table and \$300 for each chair. For Year 1, F treats the amount paid for the table and each chair as an expense on its books and records, and F elects to use the de minimis safe harbor for amounts paid for tangible property that qualify under the safe harbor. The amount paid to the interior designer is a cost of facilitating the acquisition of the table and chairs under §1.263(a)-2(f). Under paragraph (f)(3)(i) of this section, F is not required to include in the cost of tangible property the additional costs of acquiring such property if these costs are not included in the same invoice as the tangible property. Thus, F is not required to include a pro rata allocation of the amount paid to the interior designer to determine the application of the de minimis safe harbor to the table and the chairs. Accordingly, the amounts paid by F for the table and each chair meet the requirements for the de minimis safe harbor under paragraph (f)(1)(ii) of this section, and F may not capitalize the amounts paid for the table or each chair under paragraph (f)(1) of this section. In addition, F is not required to capitalize the amounts paid to the interior designer as a cost that facilitates the acquisition of tangible property under §1.263(a)-2(f)(3)(i). Instead, F may deduct the amounts paid for the table, chairs, and interior designer under §1.162-1 in the taxable year the amounts are paid provided the amounts otherwise constitute deductible ordinary and necessary expenses incurred in carrying on a trade or business.

*Example (7).* De minimis safe harbor; 12-month economic useful life. G operates a restaurant. In Year 1, G purchases 10 hand-held point-of-service devices at \$300 each for a total cost of \$3,000 as indicated by invoice. G also purchases 3 tablet computers at \$500 each for a total cost of \$1,500 as indicated by invoice. Assume each point-of-service device and each tablet computer has an economic useful life of 12 months or less, beginning when they are used in G's business. Assume that each device and each tablet is a unit of property under §1.263(a)-3(e). G does not have an AFS, but G has accounting procedures in place at the beginning of Year 1 to expense amounts paid for property costing \$300 or less and to expense amounts paid for property with an economic useful life of 12 months or less. Thus, G expenses the amounts paid for the hand-held devices on its books and records because each device costs \$300. G also expenses the amounts paid for the tablet computers on its books and records because the computers have an economic useful life of 12 months or less, beginning when they are used. The amounts paid for the hand-held devices and the tablet computers meet the requirements for the de minimis safe harbor under paragraph (f)(1)(ii) of this section. If G elects to apply the de minimis safe harbor under this paragraph (f) in Year 1, G may not capitalize the amounts paid for the hand-held devices, the tablet computers, or any other amounts meeting the criteria for the de minimis safe harbor under paragraph (f)(1) of this section. Instead, in accordance with paragraph (f)(3)(iv) of this section, G may deduct the amounts paid for the hand-held devices and tablet computers under §1.162-1 in the taxable year the amounts are paid provided the amounts otherwise constitute deductible ordinary and necessary business expenses incurred in carrying on a trade or business.

*Example (8).* De minimis safe harbor; limitation. Assume the facts as in Example 7, except G purchases the 3 tablet computers at \$600 each for a total cost of \$1,800. The amounts paid for the tablet computers do not meet the de minimis rule safe harbor under paragraphs (f)(1)(ii) and (f)(3)(vii) of this section because the cost of each computer exceeds \$500. Therefore, the amounts paid for the tablet computers may not be deducted under the safe harbor.

*Example (9).* De minimis safe harbor; materials and supplies. H is a corporation that provides consulting services to its customers. H has an AFS and a written accounting policy at the beginning of the taxable year to expense amounts paid for property costing \$5,000 or less. In Year 1, H purchases 1,000 computers at \$500 each for a total cost of \$500,000. Assume that each computer is a unit of property under §1.263(a)-3(e) and is not a material or supply under §1.162-3. In addition, H purchases 200 office chairs at \$100 each for a total cost of \$20,000 and 250 customized briefcases at \$80 each for a total cost of \$20,000. Assume that each office chair and each briefcase is a material or supply under §1.162-3(c)(1). H treats the amounts paid for the computers, office chairs, and briefcases as expenses on its AFS. The amounts paid for computers, office chairs, and briefcases meet the requirements for the de minimis safe harbor under paragraph (f)(1)(i) of this section. If H elects to apply the de minimis safe harbor under this paragraph (f) in Year 1, H may not capitalize the amounts paid for the 1,000 computers, the 200 office chairs, and the 250 briefcases under paragraph (f)(1) of this section. H may deduct the amounts paid for the computers, the office chairs, and the briefcases under §1.162-1 in the taxable year the amounts are paid provided the amounts otherwise constitute deductible ordinary and necessary expenses incurred in carrying on a trade or business.

*Example (10).* De minimis safe harbor; coordination with section 263A. J is a member of a consolidated group for Federal income tax purposes. J's financial results are reported on the consolidated AFS for the affiliated group. J's affiliated group has a written accounting policy at the beginning of Year 1, which is followed by J, to expense amounts paid for property costing less than \$1,000 or that has an economic useful life of 12 months or less. In Year 1, J acquires jigs, dies, molds, and patterns for use in the manufacture of J's products. Assume each jig, die, mold, and pattern is a unit of property under §1.263(a)-3(e) and costs less than \$1,000. In Year 1, J begins using the jigs, dies, molds and patterns to manufacture its products. Assume these items are materials and supplies under §1.162-3(c)(1)(iii), and J elects to apply the de minimis safe harbor under paragraph (f)(1)(i) of this section to amounts qualifying under the safe harbor in Year 1. Under paragraph (f)(3)(v) of this section, the amounts paid for the jigs, dies, molds, and patterns may be subject to capitalization under section 263A if the amounts paid for these tangible properties comprise the direct or allocable indirect costs of other property produced by the taxpayer or property acquired for resale.

*Example (11).* De minimis safe harbor; anti-abuse rule. K is a corporation that provides hauling services to its customers. In Year 1, K decides to purchase a truck to use in its business. K does not have an AFS. K has accounting procedures in place at the beginning of Year 1 to expense amounts paid for property costing less than \$500. K arranges to purchase a used truck for a total of \$1,500. Prior to the acquisition, K requests the seller to provide multiple invoices for different

parts of the truck. Accordingly, the seller provides K with four invoices during Year 1—one invoice of \$500 for the cab, one invoice of \$500 for the engine, one invoice of \$300 for the trailer, and a fourth invoice of \$200 for the tires. K treats the amounts paid under each invoice as an expense on its books and records. K elects to apply the de minimis safe harbor under paragraph (f) of this section in Year 1 and does not capitalize the amounts paid for each invoice pursuant to the safe harbor. Under paragraph (f)(6) of this section, K has applied the de minimis rule to amounts substantiated with invoices created to componentize property that is generally acquired as a single unit of tangible property in the taxpayer's type of business, and this property, if treated as single unit, would exceed the limitations provided under the de minimis rule. Accordingly, K is deemed to manipulate the transaction to acquire the truck with the intent to avoid the purposes of this paragraph (f). As a result, K may not apply the de minimis rule to these amounts and is subject to appropriate adjustments.

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