

CONTENTS

SECTION 1. PURPOSE

SECTION 2. DEFINITIONS

- .01 Common Improvement
- .02 Estimated Cost of Common Improvements

SECTION 3. BACKGROUND

SECTION 4. ALTERNATIVE COST METHOD

- .01 Description of Method
- .02 Examples

SECTION 5. CONDITIONS FOR USE OF ALTERNATIVE COST METHOD

SECTION 6. PROCEDURE FOR OBTAINING CONSENT

- .01 Estimated Cost of Common Improvements Determined With Regard to the Ten-Taxable Year Horizon
- .02 Estimated Cost of Common Improvements Determined Without Regard to the Ten-Taxable Year Horizon
- .03 Special Transition Procedure
- .04 Required Information

SECTION 7. REQUIREMENT TO EXTEND PERIOD OF LIMITATION ON ASSESSMENT OF INCOME TAX

- .01 Scope of Consent
- .02 Period Covered By Consent
- .03 Consent Procedure

SECTION 8. ANNUAL STATEMENT REQUIREMENT

- .01 Annual Statement Procedure
- .02 Required Information

SECTION 9. SUPPLEMENTAL REQUEST REQUIREMENT

- .01 Supplemental Request Procedure
- .02 Required Information
- .03 Consent to Extend Period of Limitation on Assessment of Income Tax

SECTION 10. FAILURE TO COMPLY

SECTION 11. EFFECT ON OTHER DOCUMENTS

SECTION 12. EFFECTIVE DATE

SECTION 13. COMMENTS OR INQUIRES

SECTION 1. PURPOSE

This revenue procedure provides the procedure for a developer of real estate to obtain the Commissioner's consent to use an alternative to the general method under section 461(h) of the Internal Revenue Code for determining when common improvement costs may be included in the basis of properties sold for purposes of determining the gain or loss resulting from the sales. Under this alternative ("the alternative cost method"), a developer may include in the basis of properties sold their allocable share of the estimated cost of common improvements without regard to whether the costs are incurred under section 461(h), subject to the limitation set forth in section 4.01 of this revenue procedure.

SEC. 2. DEFINITIONS

.01 Common Improvement. For purposes of this revenue procedure, the term "common improvement" means any real property or improvements to real property that benefit two or more properties that are separately held for sale by a developer. The developer must be contractually obligated or required by law to provide the common improvement and the cost of the common improvement must not be properly recoverable through depreciation by the developer. See Rev. Rul. 76-247, 1976-1 C.B. 217, for guidance regarding the necessary contractual obligation. Examples of common improvements include streets, sidewalks, sewerlines, playgrounds, clubhouses, tennis courts, and swimming pools that the developer is contractually obligated or required by law to provide and the costs of which are not properly recoverable through depreciation by the developer.

.02 Estimated Cost of Common Improvements.

(1) In General. Except as provided in section 2.02(2) below, under the alternative cost method, the estimated cost of common improvements as of the end of any taxable year is equal to the amount of common improvement costs incurred under section 461(h) of the Code as of the end of the taxable year, plus the amount of common improvement costs the developer reasonably anticipates it will incur under section 461(h) during the ten succeeding taxable years (the "ten-taxable year horizon"). The estimated cost of common improvements may change from taxable year to taxable year as, for example, the developer performs obligations at costs that differ from its previous estimate, as the developer changes its estimate of costs, as the developer undertakes new legal obligations or is released from existing ones, and as a new taxable year is added to the ten-taxable year horizon for estimating costs. A developer may not adjust the estimated cost of common improvements for a prior taxable year when events after filing the prior year federal income tax return show the original estimate has been either understated or overstated. If, after the return is filed, it is determined that a greater or lesser amount should have

been claimed, the remedy is to make the correction in and for the year the determination is made.

(2) Developers Requesting Permission to Estimate the Cost of Common Improvements Without Regard to the Ten-Taxable Year Horizon. A developer that requests and receives permission to use the alternative cost method pursuant to the procedure described in section 6.02 of this revenue procedure (procedure requiring a request for private letter ruling) may determine the estimated cost of some or all common improvements without regard to the ten-taxable year horizon.

SEC. 3. BACKGROUND

Rev. Proc. 75-25, 1975-1 C.B. 720, as amplified by Rev. Proc. 78-25, 1978-1 C.B. 505, allowed a subdivider of real estate to request permission from the District Director to include in the basis of lots sold the estimated cost of certain common improvements for the purpose of determining the gain or loss resulting from the sale of the lots. The subdivider had to be contractually obligated to provide the common improvements and the costs of the common improvements could not be properly recoverable through depreciation by the subdivider.

Section 461(h)(1) of the Code, enacted in 1984, provides that, in determining whether an amount has been incurred with respect to any liability during any taxable year, the all-events test shall not be treated as met any earlier than when economic performance with respect to such liability occurs. Section 1.446-1(c)(1)(ii)(B) of the Income Tax Regulations provides that the term "liability" includes any item allowable as a deduction, cost, or expense for Federal income tax purposes. In addition to allowable deductions, the term includes any amount otherwise allowable as a capitalized cost, as a cost taken into account in computing cost of goods sold, as a cost allocable to a long-term contract, or as any other cost or expense.

The enactment of section 461(h) of the Code changed the time for adding common improvement costs to the basis of property. In general, under section 461, common improvement costs may not be added to the basis of benefitted properties until the common improvement costs are incurred within the meaning of section 461(h). Common improvement costs that have not been incurred under section 461(h) when benefitted properties are sold may not be included in the basis of the properties in determining the gain or loss resulting from the sales.

On June 7, 1990, the Internal Revenue Service issued proposed regulations under section 461(h) of the Code. The preamble to the proposed regulations noted that the economic performance requirement obsoletes Rev. Proc. 75-25. However, the preamble stated that, pursuant to section 7805(b), Rev. Proc. 75-25 is obsoleted only for taxable years beginning after December 31, 1989.

Subsequently, the Internal Revenue Service issued Notice 91-4, 1991-1 C.B. 315. Notice 91-4 provided that for sales of property prior to January 1, 1991, the Service would not apply section 461(h) of the Code and the regulations thereunder to prevent developers from including the estimated cost of common improvements in the basis of property sold. Notice 91-4 further provided that the procedures of Rev. Proc. 75-25 would remain in effect until the issuance of rules that address the special circumstances of developers of real estate in a manner consistent with the purposes and principles of section 461(h). Finally, Notice 91-4 required developers to obtain permission to use the provisions of Rev. Proc. 75-25 for sales of property after December 31, 1990, or to apply section 461(h) to the costs of common improvements to such property.

This revenue procedure contains the new rules for the treatment of common improvement costs and a streamlined procedure that taxpayers must follow to use the new rules.

This revenue procedure obsoletes Rev. Proc. 75-25 with respect to sales of property after December 31, 1992. However, developers may use this revenue procedure with respect to sales of property after December 31, 1990. Thus, for sales of property during any portion of the period January 1, 1991, through December 31, 1992, developers have the option of using the provisions of this revenue procedure or the provisions of Rev. Proc. 75-25 (pursuant to Notice 91-4). Developers that desire to use the provisions of either revenue procedure must comply with the procedures for obtaining consent specified therein.

If a developer fails to timely request to use the provisions of Rev. Proc. 75-25 or the provisions of this revenue procedure for sales of property after December 31, 1990, section 461(h) of the Code will govern the treatment of the costs of common improvements to property sold after December 31, 1990, but before the first day of the first taxable year for which the developer receives consent to use the provisions of Rev. Proc. 75-25 or the provisions of this revenue procedure.

Developers that have received explicit consent from the District Director pursuant to Rev. Proc. 75-25 may continue to use the provisions of Rev. Proc. 75-25 for sales of property covered by the consent, including sales occurring after December 31, 1992.

SEC. 4. ALTERNATIVE COST METHOD

.01 Description of Method. Under the alternative cost method, a developer is permitted to include in the basis of properties sold their allocable share of the estimated cost of common improvements without regard to whether the costs are incurred under section 461(h) of the Code. As of the end of any taxable year, however, the total amount of common improvement costs included in the basis of (or otherwise taken into account with respect to) the properties sold may not exceed the amount of common improvement costs that have been incurred under section 461(h) of the Code ("the alternative cost limitation"). If the alternative cost limitation precludes a developer from including the entire allocable share of the estimated cost of common improvements in the basis of the properties sold, the costs not included may be taken into account in a subsequent taxable year to the extent additional common improvement costs have been incurred under section 461(h) of the Code.

The alternative cost limitation shall be applied on a project-by-project basis. Thus, the common improvement costs incurred with respect to one project may not be included in the alternative cost limitation of a second project. A developer may use any reasonable method to define a project in light of the common improvements to be provided.

The alternative cost method does not affect the application of general capitalization rules to developers of real estate. Thus, common improvement costs incurred under section 461(h) of the Code are allocated among the benefitted properties and may provide the basis for additional computations (e.g., interest capitalization under section 263A(f)).

.02 Examples. The following examples illustrate the application of the alternative cost method:

Example (1)

A developer will build 10 houses of equal value on a tract of land. The developer is

contractually obligated to provide common improvements that will benefit all the houses on the tract equally. The developer estimates that these common improvements will cost \$ 500,000 (including the cost of the land associated with the common improvements). The cost of these common improvements is not properly recoverable through depreciation by the developer. Each house's allocable share of the estimated cost of the common improvements is \$ 50,000 ($\$ 500,000/10$ houses). During the first taxable year, the developer sells four houses and incurs, within the meaning of section 461(h), \$ 250,000 of common improvement costs (including the cost of the land associated with the common improvements). In the second taxable year, the developer sells four houses and incurs, within the meaning of section 461(h), \$ 150,000 of common improvement costs. In the third taxable year, the developer sells two houses and incurs, within the meaning of section 461(h), \$ 100,000 of common improvement costs. The developer receives permission to use the alternative cost method.

Year 1

The developer may include \$ 200,000 of common improvement costs in the aggregate bases of the four houses sold during the taxable year in determining the gain or loss resulting from the sales. This amount represents the allocable share of the estimated cost of common improvements for the four houses ($[\$ 500,000 / 10] \times 4$). This amount does not exceed the amount of common improvement costs incurred under section 461(h) as of the end of the taxable year (\$ 250,000). (If the developer had not received permission to use the alternative cost method, the developer would include only \$ 100,000 of common improvement costs in the aggregate bases of the four houses sold during the taxable year ($[\$ 250,000 / 10] \times 4$)).

Year 2

The developer may include \$ 200,000 of common improvement costs in the aggregate bases of the four houses sold during the taxable year in determining the gain or loss resulting from the sales. This amount represents the allocable share of the estimated cost of common improvements for the four houses ($[\$ 500,000 / 10] \times 4$). This amount plus the amount of common improvement costs included in the aggregate bases of the four houses sold in the preceding taxable year (\$ 200,000) does not exceed the amount of common improvement costs incurred under section 461(h) as of the end of the second taxable year (\$ 400,000).

Year 3

The developer may include \$ 100,000 of common improvement costs in the aggregate bases of the two houses sold during the taxable year in determining the gain or loss resulting from the sales. This amount represents the allocable share of the estimated cost of common improvements for the two houses ($[\$ 500,000 / 10] \times 2$). This amount plus the amount of common improvement costs included in the aggregate bases of the eight houses sold in the preceding taxable years ($\$ 200,000 + \$ 200,000$) does not exceed the amount of common improvement costs incurred under section 461(h) as of the end of the third taxable year (\$ 500,000).

Example (2)

Assume the same facts as in example (1), except that the developer incurs, within the meaning of section 461(h), \$ 30,000 of common improvement costs in the second taxable year and \$ 220,000 of common improvement costs in the third taxable year. The developer may include only \$ 80,000 of common improvement costs in the aggregate bases of the four houses sold during the second taxable year in determining the gain or loss resulting from the sales. The alternative cost limitation precludes the developer from including the remaining \$ 120,000 of the allocable share of the estimated cost of common improvements for the four houses in their aggregate bases. The costs not included in basis because of the alternative cost limitation may be taken into account when the additional \$ 220,000 of common improvement costs are incurred in the third taxable year.

SEC. 5. CONDITIONS FOR USE OF ALTERNATIVE COST METHOD

Consent to use the alternative cost method is conditioned on the following:

(1) The developer must be contractually obligated or required by law to provide the common improvements, and the cost of the common improvements must not be properly recoverable through depreciation by the developer.

(2) The developer must file a request to use the alternative cost method on a project-by-project basis in accordance with the procedure set forth in section 6.01 of this revenue procedure (procedure providing for automatic consent), the procedure set forth in section 6.02 of this revenue procedure (procedure requiring a request for private letter ruling), or the procedure set forth in section 6.03 of this revenue procedure (special transition procedure for projects in process). The request must include the information set forth in section 6.04 of this revenue procedure.

(3) The developer must sign a consent extending the period of limitation on the assessment of income tax with respect to the use of the alternative cost method on a project-by-project basis as described in section 7 of this revenue procedure.

(4) The developer must file an annual statement for each project for which the developer has received permission to use the alternative cost method in accordance with the procedure set forth in section 8.01 of this revenue procedure. The annual statement must include the information set forth in section 8.02 of this revenue procedure.

(5) The developer must file a supplemental request for each project for which the developer has received permission to use the alternative cost method in accordance with the procedure set forth in section 9.01 of this revenue procedure. The supplemental request must include the information set forth in section 9.02 of this revenue procedure and a consent extending the period of limitation on the assessment of income tax with respect to the use of the alternative cost method as described in section 9.03 of this revenue procedure.

SEC. 6. PROCEDURE FOR OBTAINING CONSENT

.01 Estimated Cost of Common Improvements Determined With Regard to the Ten-Taxable Year Horizon. Except as provided in section 6.03 below, a developer requesting permission to

use the alternative cost method with respect to a project that desires to determine the estimated cost of common improvements with regard to the ten-taxable year horizon as provided in section 2.02(1) of this revenue procedure, must use the following "automatic procedure." The developer must file a request with the District Director for the internal revenue district in which is located the legal residence or principal place of business of the person required to make the return (if the developer is an individual, estate, or trust), or the district in which is located the principal place of business or the principal office or agency (if the developer is a corporation or partnership). The request must be filed on or before the due date of the developer's original federal income tax return (determined with regard to extensions of time) for the taxable year in which the first benefitted property in the project is sold. The request must include the information described in section 6.04 of this revenue procedure and a consent extending the period of limitation on the assessment of income tax with respect to the use of the alternative cost method as described in section 7 of this revenue procedure. The developer must also attach a copy of the request to its timely filed (determined with regard to extensions of time) original federal income tax return for the taxable year. No user fee is required for a filing under this section 6.01.

A developer complying with this automatic procedure and the other conditions of this revenue procedure is granted the Commissioner's consent to use the alternative cost method with respect to the project covered by the request.

.02 Estimated Cost of Common Improvements Determined Without Regard to the Ten-Taxable Year Horizon. Except as provided in section 6.03 below, a developer requesting permission to use the alternative cost method with respect to a project that desires to determine the estimated cost of common improvements without regard to the ten-taxable year horizon as provided in section 2.02(2) of this revenue procedure, must use the following procedure. The developer must file a request for private letter ruling pursuant to the provisions of Rev. Proc. 92-1, 1992-1 I.R.B. 9 (or any successor revenue procedure). The request must be filed within 30 days after the close of the taxable year in which the first benefitted property in the project is sold. The request must include the information described in section 6.04 of this revenue procedure and a consent extending the period of limitation on the assessment of income tax with respect to the use of the alternative cost method as described in section 7 of this revenue procedure. A user fee is required for a request filed under this section 6.02.

A developer will ordinarily be granted consent to use the alternative cost method with respect to the project covered by the request upon a showing: (1) that the developer is contractually obligated or required by law to provide the common improvements, (2) that the developer's estimate of the cost of common improvements is accurate, and (3) that the developer is likely to provide the common improvements.

.03 Special Transition Procedure. A developer may request permission to use the alternative cost method with respect to a project regardless of the requirement in sections 6.01 and 6.02 that the request for the project be filed for the taxable year in which the first benefitted property in the project is sold. The request must be filed for the taxable year that includes January 1, 1991, or the taxable year that includes January 1, 1993 (or any intervening taxable year). A developer that desires to determine the estimated cost of common improvements with regard to the ten-taxable year horizon as provided in section 2.02(1) of this revenue procedure must file the request with the District Director on or before the due date of its original federal income tax return

(determined with regard to extensions of time) for the taxable year. The developer must also attach a copy of the request to its timely filed (determined with regard to extensions of time) original federal income tax return for the taxable year. If the tax return for the taxable year has already been filed, the developer must: (1) file the request with the District Director on or before June 29, 1993, and (2) attach a copy of the request to an amended return for the taxable year filed on or before June 29, 1993. A developer that desires to determine the estimated cost of common improvements without regard to the ten-taxable year horizon as provided in section 2.02(2) of this revenue procedure, must file the request for private letter ruling on or before the later of 30 days after the close of the taxable year or June 29, 1993. A developer requesting consent pursuant to this section 6.03 must comply with the other procedures specified in sections 6.01 or 6.02 (whichever would otherwise be applicable).

The change to the alternative cost method with respect to the project is a change in method of accounting within the meaning of section 446(e) of the Code. The developer must implement the change using the "cut-off method" described in Q&A-1 and Q&A-11 of section 1.461-7T except that the effective date is the first day of the taxable year for which the change is made. No section 481(a) adjustment results from a change in method of accounting implemented on a cut-off basis.

.04 Required Information. The request to use the alternative cost method required by sections 6.01 through 6.03 above must be in the form and contain the information as described below:

(1) The top of the first page should have the legend "Request to Use the Alternative Cost Method as Provided by Rev. Proc. 92-29."

(2) The developer's name, address, telephone number, and taxpayer identification number.

(3) The Internal Revenue Service Center where the developer's federal income tax return is filed.

(4) A description of the project covered by this request. The project description should include a description of the tract or tracts of land where the project covered by this request is situated using the name of the state, county, town, and the plat map number. If the request involves a subdivision, provide the subdivision name. If the request involves lots, indicate their number.

(5) A schedule with the following information:

(a) The cost or other basis of the entire tract or tracts of land where the project covered by this request is situated and a description of how the cost or other basis was determined.

(b) A listing of the lots by subdivision covered by this request.

(c) The portion of the cost or other basis of the tract or tracts of land allocable to each lot and a description of the manner in which the cost or other basis was allocated to each lot.

(d) To the extent the request does not involve lots, the portion of the cost or other basis of the tract or tracts of land allocable to each property and a description of the manner in which the cost or other basis was allocated to each property.

(6) A schedule with the following information:

(a) A description of each common improvement that the developer is contractually obligated or required by law to provide for the entire tract or tracts of land where the project covered by this request is situated.

(b) The person or persons to whom the developer is contractually obligated or

required by law to provide the common improvements.

(c) A description of the document evidencing the contractual obligation or requirement of law and a description of the nature of the obligation contained in the document.

(d) The estimated cost of common improvements for each common improvement and the manner in which the estimate was made.

(e) The portion of the estimated cost of common improvements allocable to each lot and a description of the manner in which the estimated cost was allocated to each lot.

(f) To the extent the request does not involve lots, the portion of the estimated cost of common improvements allocable to each property and a description of the manner in which the estimated cost was allocated to each property.

(g) The estimated date production will begin on each common improvement and an estimated date of completion of the common improvement.

(7) The request described in this section must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested ruling are true, correct, and complete." The declaration must be signed by a person that has personal knowledge of the facts, and whose duties are not limited to obtaining a ruling or determination letter from the Service. If the developer is a corporation, the declaration must be signed by an officer of the corporation. If the corporation is a member of a consolidated group, the declaration must be signed by an officer of the common parent of the group. The person signing for a trust must be a trustee and the person signing for a partnership must be a general partner.

SEC. 7. REQUIREMENT TO EXTEND PERIOD OF LIMITATION ON ASSESSMENT OF INCOME TAX

.01 Scope of Consent. A developer requesting permission to use the alternative cost method with respect to a project must agree to extend the period of limitation on the assessment of income tax for each taxable year in which the alternative cost method is used. The consent is limited to the assessment of deficiencies attributable to the use of the alternative cost method with respect to the project covered by the consent.

.02 Period Covered By Consent. The consent shall permit the assessment of a deficiency with respect to each taxable year in which the alternative cost method is used within one year after the return is filed for the taxable year that the taxpayer specifies it expects to complete the project. A return filed before the last day prescribed for filing (determined without regard to extensions of time) shall be considered as filed on such last day. If section 6501 of the Code (section 6229 in the case of a partnership subject to the TEFRA partnership provisions) provides a longer period for the assessment of a deficiency, however, that longer period shall apply.

.03 Consent Procedure. The developer must execute and file a consent on the applicable Form 921 or Form 921A. In general, if the developer files a partnership return on Form 1065, then a consent must be filed on Form 921A by each member of the partnership. However, in the case of a partnership that is subject to the unified audit and litigation provisions for partnerships (TEFRA partnership provisions), the consent may also be filed by the Tax Matters Partner or any other person authorized by the partnership in writing to enter into such an agreement. If the developer files a fiduciary return on Form 1041, then a consent must be filed on Form 921A by each

beneficiary of the estate or trust. The consent must be filed with the District Director as provided in section 6 of this revenue procedure.

SEC. 8. ANNUAL STATEMENT REQUIREMENT

.01 Annual Statement Procedure. A developer that has received permission to use the alternative cost method with respect to a project must file an annual statement with the District Director for the internal revenue district in which is located the legal residence or principal place of business of the person required to make the return (if the developer is an individual, estate, or trust), or the district in which is located the principal place of business or the principal office or agency (if the developer is a corporation or partnership). The annual statement must be filed on or before the due date of the developer's original federal income tax return (determined with regard to extensions of time) for the first taxable year following the taxable year for which the developer received permission to use the alternative cost method and for each succeeding taxable year in which the developer uses the alternative cost method. The annual statement must include the information described in section 8.02 of this revenue procedure. The developer must also attach a copy of the annual statement to its timely filed (determined with regard to extensions of time) original federal income tax return for each taxable year.

.02 Required Information. The annual statement required by section 8.01 above must be in the form and contain the information as described below:

(1) The top of the first page should have the legend "Annual Statement on the Alternative Cost Method Provided by Rev. Proc. 92-29".

(2) The developer's name, address, telephone number, and taxpayer identification number.

(3) The Internal Revenue Service Center where the developer's federal income tax return is filed.

(4) The internal revenue district in which the request to use the alternative cost method was filed.

(5) The date of expiration of the period of limitation on the assessment of income tax as consented to on Form 921 or Form 921A. See section 7 of this revenue procedure.

(6) A description of the project covered by this request. The project description should include a description of the tract or tracts of land where the project covered by the request is situated using the name of the state, county, town, and the plat map number. If the request involves a subdivision, provide the subdivision name. If the request involves lots, indicate their number.

(7) A schedule with the following information:

(a) An updated estimated cost of common improvements for each common improvement.

(b) The portion of the estimated cost of common improvements allocable to each lot (or other property) and a description of the manner in which the estimated cost was allocated to each lot (or other property).

(c) The lots (or other properties) sold as of the end of the immediately preceding taxable year.

(d) The common improvement costs incurred within the meaning of section 461(h) as of the end of the immediately preceding taxable year.

(e) The common improvement costs included in the basis of (or otherwise taken into

account with respect to) the lots (or other properties) sold as of the end of the immediately preceding taxable year.

(f) The lots (or other properties) sold during the taxable year.

(g) The common improvement costs incurred within the meaning of section 461(h) during the taxable year.

(h) The common improvement costs included in the basis of (or otherwise taken into account with respect to) the lots (or other properties) sold during the taxable year.

SEC. 9. SUPPLEMENTAL REQUEST REQUIREMENT

.01 Supplemental Request Procedure. A developer using the alternative cost method with respect to a project must file a supplemental request on or before the expiration of the periods determined in section 7.02 and 9.03 and continue to use the alternative cost method with respect to common improvements not completed at that time. The supplemental request must be filed with the District Director for the internal revenue district in which is located the legal residence or principal place of business of the person required to make the return (if the developer is an individual, estate, or trust), or the district in which is located the principal place of business or the principal office or agency (if the developer is a corporation or partnership). The supplemental request must include the consent to extend the period of limitation on the assessment of income tax with respect to the use of the alternative cost method prescribed by section 9.03 of this revenue procedure. Except in unusual circumstances, the District Director will notify the developer of the approval or disapproval of the supplemental request within 45 days of receipt of the request.

.02 Required Information. The developer must substantiate:

(a) that, for a valid reason, it was unable to complete all of the common improvements it is contractually obligated or required by law to provide within the period covered by the consent;

(b) that it continues to be contractually obligated or required by law to provide the common improvements; and

(c) that it has, to date, complied with the requirements of this revenue procedure.

.03 Consent to Extend Period of Limitation on Assessment of Income Tax. A developer requesting permission to continue to use the alternative cost method with respect to a project under section 9.01 of this revenue procedure must agree to extend the period of limitation on the assessment of income tax with respect to the use of the alternative cost method for each taxable year in which the alternative cost method is used by executing and filing a consent on the applicable Form 921 or Form 921A. The consent is limited to the assessment of deficiencies attributable to the use of the alternative cost method with respect to the project covered by the consent. The consent shall permit the assessment of a deficiency with respect to each taxable year in which the alternative cost method is used within one year after the return is filed for the taxable year that the taxpayer specifies it expects to complete the project. A return filed before the last day prescribed for filing (determined without regard to extensions of time) shall be considered as filed on such last day. If section 6501 of the Code (section 6229 in the case of a partnership subject to the TEFRA partnership provisions) provides a longer period for the assessment of a deficiency, however, that longer period shall apply.

SEC. 10. FAILURE TO COMPLY

A developer that fails to substantially comply with the provisions of this revenue procedure will not be permitted to use the alternative cost method and therefore may not include common improvement costs that have not been incurred under section 461(h) of the Code in the basis of benefitted properties for the purpose of determining the gain or loss resulting from the sale of the properties. If the first year in which the alternative cost method is improperly used is no longer open for the assessment of a deficiency of tax, the Commissioner may use her statutory discretion to change the taxpayer's method of accounting in a later year and impose an adjustment under section 481(a) of the Code.

SEC. 11. EFFECT ON OTHER DOCUMENTS

.01 Except as provided in section 11.02 below, this revenue procedure obsoletes Rev. Proc. 75-25 and Rev. Proc. 78-25 with respect to sales of property after December 31, 1992.

.02 Developers that have received explicit consent from the District Director pursuant to Rev. Proc. 75-25 may continue to use the provisions of Rev. Proc. 75-25 with respect to sales of property after December 31, 1992, that are covered by the consent.

SEC. 12. EFFECTIVE DATE

This revenue procedure is effective for sales of property after December 31, 1992. Developers may, however, use this revenue procedure with respect to sales of property after December 31, 1990.

SEC. 13. COMMENTS OR INQUIRIES

Comments or inquiries regarding this revenue procedure should be addressed to the Internal Revenue Service, Office of Chief Counsel, Attention CC:IT&A:01, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.