

# Notice of Proposed Rulemaking; Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations and Notice of Public Hearing

## Changes in Computing Depreciation

### REG-126459-03

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9105) under sections 446(e) and 1016(a)(2) of the Internal Revenue Code relating to a change in computing depreciation or amortization as well as a change from a nondepreciable or nonamortizable asset to a depreciable or amortizable asset (or vice versa). The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by April 1, 2004. Outlines of topics to be discussed at the public hearing scheduled for April 7, 2004, at 10 a.m. must be received by March 17, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-126459-03), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-126459-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS Internet site at: <http://www.irs.gov/regs>.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sara Logan or Douglas Kim, (202) 622-3110; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse, (202) 622-4693 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

Temporary regulations (T.D. 9105) in this issue of the Bulletin amend 26 CFR part 1 relating to sections 167, 446, and 1016 of the Internal Revenue Code (Code). The temporary regulations provide guidance under section 446(e) on whether a change in computing depreciation or amortization as well as a change from a nondepreciable or nonamortizable asset to a depreciable or amortizable asset (or vice versa) is a change in method of accounting that requires the consent of the Commissioner.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

##### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 7, 2004, beginning at 10:00 a.m. in the Auditorium, 7th Floor, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 17, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

## Drafting Information

The principal author of these regulations is Sara Logan, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

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## 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 reads as follows:

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

Par. 2. Section 1.167(e)–1 is amended by revising paragraphs (a) and (e) to read as follows:

#### *§1.167(e)–1 Change in method.*

(a) [The text of the proposed amendment to §1.167(e)–1(a) is the same as the text of §1.167(e)–1T(a) published elsewhere in this issue of the Bulletin].

\* \* \* \* \*

(e) *Effective date.* This section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, see §1.167(e)–1 in effect prior to December 30, 2003 (§1.167(e)–1 as contained in 26 CFR part 1 edition revised as of April 1, 2003).

Par. 3. Section 1.446–1 is amended by revising paragraphs (e)(2)(ii)(a), (e)(2)(ii)(b), (e)(2)(ii)(d), (e)(2)(iii), and (e)(4) to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii)(a) and (b) [The text of the proposed amendment to §1.446–1(e)(2)(ii)(a) and (b) is the same as the text of §1.446–1T(e)(2)(ii)(a) and (b) published elsewhere in this issue of the Bulletin].

\* \* \* \* \*

(d) [The text of this paragraph (e)(2)(ii)(d) is the same as the text of §1.446–1T(e)(2)(ii)(d) published elsewhere in this issue of the Bulletin].

(iii) [The text of the proposed amendment to §1.446–1(e)(2)(iii) is the same as the text of §1.446–1T(e)(2)(iii) published elsewhere in this issue of the Bulletin].

\* \* \* \* \*

(4) *Effective date*—(i) *In general.* Except as provided in paragraphs (e)(3)(iii) and (e)(4)(ii) of this section, paragraph (e) of this section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, see §1.446–1(e) in effect prior to December 30, 2003 (§1.446–1(e) as contained in 26 CFR part 1 edition revised as of April 1, 2003).

(ii) *Changes involving depreciable or amortizable assets.* With respect to paragraph (e)(2)(ii)(d) of this section, paragraph (e)(2)(iii) *Examples 9 through 17* of this section, the addition of the language “certain changes in computing depreciation or amortization (see paragraph (e)(2)(ii)(d) of this section)” to the last sentence of paragraph (e)(2)(ii)(a) of this section, and the removal of all language regarding useful life and the sentence “On the other hand, a correction to require depreciation in lieu of a deduction for the cost of a class of depreciable assets which had been consistently treated as an expense in the year of purchase involves the question of the proper timing of an item, and is to be treated as a change in method of accounting” from paragraph (e)(2)(ii)(b) of this section—

(A) For any change in depreciation or amortization that is a change in method of accounting, this section applies to such a change in method of accounting made for

taxable years ending on or after December 30, 2003; and

(B) For any change in depreciation or amortization that is not a change in method of accounting, this section applies to such a change made for taxable years ending on or after December 30, 2003.

Par. 4. Section 1.1016–3 is amended by revising paragraphs (h) and (j) to read as follows:

*§1.1016–3 Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 28, 1913.*

\* \* \* \* \*

(h) [The text of the proposed amendment to §1.1016–3(h) is the same as the text of §1.1016–3T(h) published elsewhere in this issue of the Bulletin].

\* \* \* \* \*

(j) *Effective date*—(1) *In general.* Except as provided in paragraph (j)(2) of this section, this section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, see §1.1016–3 in effect prior to December 30, 2003 (§1.1016–3 as contained in 26 CFR part 1 edition revised as of April 1, 2003).

(2) *Depreciation or amortization changes.* Paragraph (h) of this section applies to a change in depreciation or amortization for property subject to section 167, 168, 197, 1400I, 1400L(b), or 1400L(c), or former section 168 for taxable years ending on or after December 30, 2003.

Mark E. Matthews,  
Deputy Commissioner for  
Services and Enforcement.