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DEPARTMENT OF THE TREASURY

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Internal Revenue Service

26 CFR Part 1

REG-106590-00, REG-138499-02

RIN 1545-AX95; RIN 1545-BB05

Depreciation of MACRS Property That is Acquired in a Like-kind Exchange or As a Result of an Involuntary Conversion

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the depreciation of property subject to section 168 of the Internal Revenue Code (MACRS property). Specifically, the temporary regulations provide guidance on how to depreciate MACRS property acquired in a like-kind exchange under section 1031 or as a result of an involuntary conversion under section 1033 when both the acquired and relinquished property are subject to MACRS in the hands of the acquiring taxpayer. 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 and a partial withdrawal of proposed regulations [REG-138499-02] published July 21, 2003.

DATES: Written or electronic comments must be received by May 30, 2004. Outlines

of topics to be discussed at the public hearing scheduled for June 3, 2004, at 10 a.m. must be received by May 13, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-106590-00), room 5203, Internal Revenue Service, P.O. 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-106590-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC, or sent electronically, via the IRS Internet site at <http://www.irs.gov/regs>. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Charles J. Magee, (202) 622-3110; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Robin Jones, (202) 622- 7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

### **Background**

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to section 168 of the Internal Revenue Code (Code). The temporary regulations provide guidance under section 168 on how to depreciate MACRS property acquired in a like-kind exchange under section 1031 or as a result of an involuntary conversion under section 1033 when both the acquired and relinquished property are subject to MACRS in the hands of the acquiring taxpayer.

The text of those 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 may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 3, 2004, beginning at 10 a.m. in the Auditorium of the 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 May 13, 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 authors of these regulations are Alan H. Cooper, Office of the Chief Counsel (Small Business/Self Employed), and Charles J. Magee, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

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

Income taxes, Reporting and recordkeeping requirements.

### **Partial Withdrawal of Proposed Regulations**

Under the authority of 26 U.S.C. 7805, §§1.168(a)-1 and 1.168(b)-1 of the notice of proposed rulemaking (REG-138499-02) published in the **Federal Register** on July 21, 2003, (68 FR 43047) are withdrawn.

## 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 \* \* \*

§1.168(i)-1 also issued under 26 U.S.C. 168(i)(4).

Par. 2. Sections 1.168(a)-1 and 1.168(b)-1 are added to read as follows:

#### §1.168(a)-1 Modified accelerated cost recovery system.

[The text of this proposed section is the same as the text of §1.168(a)-1T(a) and (b) published elsewhere in this issue of the **Federal Register**].

#### §1.168(b)-1 Definitions.

[The text of this proposed section is the same as the text of §1.168(b)-1T(a) and (b)(1) published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.168(d)-1 is amended to read as follows:

1. Revising paragraph (b)(3)(i) and (ii).
2. Adding paragraph (d)(3).

The revision and addition read as follows:

#### §1.168(d)-1 Applicable conventions—half-year and mid-quarter conventions.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) and (ii) [The text of the proposed amendment to §1.168(d)-1(b)(3)(i) and (ii) is the same as the text of §1.168(d)-1T(b)(3)(i) and (ii) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(d) \* \* \*

(3) [The text of the proposed amendment to §1.168(d)-1(d)(3) is the same as the text of §1.168(d)-1T(d)(3) published elsewhere in this issue of the **Federal Register**.]

Par. 4. Section 1.168(i)-0 is amended by revising the entries for §1.168(i)-1(d)(2), (e)(3)(i), (e)(3)(v) and (vi), (f)(1), (f)(2), (f)(2)(i), (i), (j), and (l) to read as follows:

' 1.168(i)-0 Table of contents for the general asset account rules.

\* \* \* \* \*

§1.168(i)-1 General asset accounts.

\* \* \* \* \*

(d) \* \* \*

(2) [The text of the proposed entry for §1.168(i)-1(d)(2) is the same as the entry for §1.168(i)-1T(d)(2) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(i) [The text of the proposed entry for §1.168(i)-1(e)(3)(i) is the same as the entry for §1.168(i)-1T(e)(3)(i) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(vi) [The text of the proposed entries for §1.168(i)-1(e)(3)(vi) is the same as the entries for §1.168(i)-1T(e)(3)(vi) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(f) \* \* \*

(f)(1) through (f)(2)(i) [The text of the proposed entries for §1.168(i)-1(f)(1) through (f)(2)(i) is the same as the text of the entries for §1.168(i)-1T(f)(1) through (f)(2)(i) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(i) and (j) [The text of the proposed entries for §1.168(i)-1(i) and (j) is the same as the entries for §1.168(i)-1T(i) and (j) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(l) [The text of the proposed entry for §1.168(i)-1(l) is the same as the entry for §1.168(i)-1T(l) published elsewhere in this issue of the **Federal Register**].

Par. 5. Section 1.168(i)-1 is amended by revising paragraphs (c)(2)(ii)(E), (d)(2), (e)(3)(i), (e)(3)(iii)(B)(4), (e)(3)(vi), (f)(1), (f)(2)(i), (i), (j), and (l) to read as follows:

§1.168(i)-1 General asset accounts.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(E) [The text of the proposed amendment to §1.168(i)-1(c)(2)(ii)(E) is the same as the text of §1.168(i)-1T(c)(2)(ii)(E) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(d) \* \* \*

(2) [The text of the proposed amendment to §1.168(i)-1(d)(2) is the same as the text of §1.168(i)-1T(d)(2) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(i) [The text of the proposed amendment to §1.168(i)-1(e)(3)(i) is the same as the text of §1.168(i)-1T(e)(3)(i) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(iii) \* \* \*

(B) \* \* \*

(4) [The text of the proposed amendment to §1.168(i)-1(e)(3)(iii)(B)(4) is the same as the text of §1.168(i)-1T(e)(3)(iii)(B)(4) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(e)(3)(vi) [The text of the proposed amendment to §1.168(i)-1(e)(3)(vi) is the same as the text of §1.168(i)-1T(e)(3)(vi) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(f)(1) and (2) [The text of the proposed amendment to §1.168(i)-1(f)(1) and (2) is the same as the text of §1.168(i)-1T(f)(1) and (2) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(i) and (j) [The text of the proposed amendment to §1.168(i)-1(i) and (j) is the same as the text of §1.168(i)-1T(i) and (j) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(l) [The text of the proposed amendment to §1.168(i)-1(l) is the same as the text of §1.168(i)-1T(l)(1) through (l)(3)(i) published elsewhere in this issue of the **Federal Register**].

Par. 6. Section 1.168(i)-5 is added to read as follows:

§1.168(i)-5 Table of contents.



[The text of this proposed section is the same as the text of §1.168(i)-5T published elsewhere in this issue of the **Federal Register**].

Par. 7. Section 1.168(i)-6 is added to read as follows:

§1.168(i)-6 Like-kind exchanges and involuntary conversions.

[The text of this proposed section is the same as the text of §1.168(i)-6T published elsewhere in this issue of the **Federal Register**].

Par. 8. Section 1.168(k)-1 is added to read as follows:

§1.168(k)-1 Additional first year depreciation deduction.

(a) through (f)(5)(ii)(F)(1) [Reserved]. For further guidance, see §1.168(k)-1T(a) through (f)(5)(ii)(F)(1).

(2) [The text of the proposed amendment to §1.168(k)-1(f)(5)(ii)(F)(2) is the same as the text of §1.168(k)-1T(f)(5)(ii)(F)(2) published elsewhere in this issue of the **Federal Register**].

(f)(5)(ii)(G) through (f)(5)(iv) [Reserved]. For further guidance, see §1.168(k)-1T(f)(5)(ii)(G) through (f)(5)(iv).

(v) [The text of the proposed amendment to §1.168(k)-1(f)(5)(v) is the same as the text of §1.168(k)-1T(f)(5)(v) published elsewhere in this issue of the **Federal Register**].

(f)(6) through (f)(9) [Reserved]. For further guidance, see §1.168(k)-1T (f)(6) through (f)(9).

(g) Effective date. (1) [The text of the proposed amendment to §1.168(k)-1(g)(1) is the same as §1.168(k)-1T(g)(1)(i) published elsewhere in this issue of the **Federal Register**].

(2) [Reserved]. For further guidance, see §1.168(k)-1T(g)(2).

(3)(i) and (ii) [The text of the proposed amendment to §1.168(k)-1(g)(3)(i) and (ii) is the same as the text of §1.168(k)-1T(g)(3)(i) and (ii) published elsewhere in this issue of the **Federal Register**].

(g)(4) [Reserved]. For further guidance, see §1.168(k)-1T(g)(4).

/s/ Mark E. Matthews

Deputy Commissioner for Services and Enforcement.