

Reg. Section 1.167(a)-14(c)(3)

Treatment of certain intangible property excluded from section 197.

(a) Overview. This section provides rules for the amortization of certain intangibles that are excluded from section 197 [26 USCS § 197] (relating to the amortization of goodwill and certain other intangibles). These excluded intangibles are specifically described in § 1.197-2(c) (4), (6), (7), (11), and (13) and include certain computer software and certain other separately acquired rights, such as rights to receive tangible property or services, patents and copyrights, certain mortgage servicing rights, and rights of fixed duration or amount. Intangibles for which an amortization amount is determined under section 167(f) [26 USCS § 167(f)] and intangibles otherwise excluded from section 197 [26 USCS § 197] are amortizable only if they qualify as property subject to the allowance for depreciation under section 167(a) [26 USCS § 167(a)].

(b) Computer software -- (1) In general. The amount of the deduction for computer software described in section 167(f)(1) [26 USCS § 167(f)(1)] and § 1.197-2(c)(4) is determined by amortizing the cost or other basis of the computer software using the straight line method described in § 1.167(b)-1 (except that its salvage value is treated as zero) and an amortization period of 36 months beginning on the first day of the month that the computer software is placed in service. Before determining the amortization deduction allowable under this paragraph (b), the cost or other basis of computer software that is section 179 [26 USCS § 179] property, as defined in section 179(d)(1)(A)(ii) [26 USCS § 179(d)(1)(A)(ii)], must be reduced for any portion of the basis the taxpayer properly elects to treat as an expense under section 179 [26 USCS § 179]. In addition, the cost or other basis of computer software that is qualified property under section 168(k)(2) [26 USCS § 168(k)(2)] or § 1.168(k)-1, 50-percent bonus depreciation property under section 168(k)(4) [26 USCS § 168(k)(4)] or § 1.168(k)-1, or qualified New York Liberty Zone property under section 1400L(b) [26 USCS § 1400L(b)] or § 1.1400L(b)-1, must be reduced by the amount of the additional first year depreciation deduction allowed or allowable, whichever is greater, under section 168(k) [26 USCS § 168(k)] or section 1400L(b) [26 USCS § 1400L(b)] for the computer software. If costs for developing computer software that the taxpayer properly elects to defer under section 174(b) [26 USCS § 174(b)] result in the development of property subject to the allowance for depreciation under section 167 [26 USCS § 167], the rules of this paragraph (b) will apply to the unrecovered costs. In addition, this paragraph (b) applies to the cost of separately acquired computer software if the cost to acquire the software is separately stated and the cost is required to be capitalized under section 263(a) [26 USCS § 263(a)].

(2) Exceptions. Paragraph (b)(1) of this section does not apply to the cost of computer software properly and consistently taken into account under § 1.162-11. The cost of acquiring an interest in computer software that is included, without being separately stated, in the cost of the hardware or other tangible property is treated as part of the cost of the hardware or other tangible property that is capitalized and depreciated under other applicable sections of the Internal Revenue Code.

(3) Additional rules. Rules similar to those in § 1.197-2 (f)(1)(iii), (f)(1)(iv), and (f)(2) (relating to the computation of amortization deductions and the treatment of contingent amounts) apply for purposes of this paragraph (b).

(c) Certain interests or rights not acquired as part of a purchase of a trade or business -- (1) Certain rights to receive tangible property or services. The amount of the deduction for a right (other than a right acquired as part of a purchase of a trade or business) to receive tangible property or services under a contract or from a governmental unit (as specified in section 167(f)(2) [26 USCS § 167(f)(2)] and § 1.197-2(c)(6)) is determined as follows:

(i) Amortization of fixed amounts. The basis of a right to receive a fixed amount of tangible property or services is amortized for each taxable year by multiplying the basis of the right by a fraction, the numerator of which is the amount of tangible property or services received during the taxable year and the denominator of which is the total amount of tangible property or services received or to be received under the terms of the contract or governmental grant. For example, if a taxpayer acquires a favorable contract right to receive a fixed amount of raw materials during an unspecified period, the taxpayer must amortize the cost of acquiring the contract right by multiplying the total cost by a fraction, the numerator of which is the amount of raw materials received under the contract during the taxable year and the denominator of which is the total amount of raw materials received or to be received under the contract.

(ii) Amortization of unspecified amount over fixed period. The cost or other basis of a right to receive an unspecified amount of tangible property or services over a fixed period is amortized ratably over the period of the right. (See paragraph (c)(3) of this section regarding renewals).

(iii) Amortization in other cases. [Reserved]

(2) Rights of fixed duration or amount. The amount of the deduction for a right (other than a right acquired as part of a purchase of a trade or business) of fixed duration or amount received under a contract or granted by a governmental unit (specified in section 167(f)(2) [26 USCS § 167(f)(2)] and § 1.197-2(c)(13)) and not covered by paragraph (c)(1) of this section is determined as follows:

(i) Rights to a fixed amount. The basis of a right to a fixed amount is amortized for each taxable year by multiplying the basis by a fraction, the numerator of which is the amount received during the taxable year and the denominator of which is the total amount received or to be received under the terms of the contract or governmental grant.

(ii) Rights to an unspecified amount over fixed duration of less than 15 years. The basis of a right to an unspecified amount over a fixed duration of less than 15 years is amortized ratably over the period of the right.

 (3) Application of renewals. (i) For purposes of paragraphs (c) (1) and (2) of this section, the duration of a right under a contract (or granted by a governmental unit) includes any renewal period if, based on all of the facts and circumstances in existence at any time during the taxable year in which the right is acquired, the facts clearly indicate a reasonable expectancy of renewal.

(ii) The mere fact that a taxpayer will have the opportunity to renew a contract right or other right on the same terms as are available to others, in a competitive auction or similar process that is designed to reflect fair market value and in which the taxpayer is not contractually advantaged, will generally not be taken into account in determining the duration of such right provided that the bidding produces a fair market value price comparable to the price that would be obtained if the rights were purchased immediately after renewal from a person (other than the person granting the renewal) in an arm's-length transaction.

(iii) The cost of a renewal not included in the terms of the contract or governmental grant is treated as the acquisition of a separate intangible asset.

(4) Patents and copyrights. If the purchase price of a interest (other than an interest acquired as part of a purchase of a trade or business) in a patent or copyright described in section 167(f)(2) [26 USCS § 167(f)(2)] and § 1.197-2(c)(7) is payable on at least an annual basis as either a fixed amount per use or a fixed percentage of the revenue derived from the use of the patent or copyright, the depreciation deduction for a taxable year is equal to the amount of the purchase price paid or incurred during the year. Otherwise, the basis of such patent or copyright (or an interest therein) is depreciated either ratably over its remaining useful life or under section 167(g) [26 USCS § 167(g)] (income forecast method). If a patent or copyright becomes valueless in any year before its legal expiration, the adjusted basis may be deducted in that year.

(5) Additional rules. The period of amortization under paragraphs (c) (1) through (4) of this section begins when the intangible is placed in service, and rules similar to those in § 1.197-2(f)(2) apply for purposes of this paragraph (c).

(d) Mortgage servicing rights -- (1) In general. The amount of the deduction for mortgage servicing rights described in section 167(f)(3) [26 USCS § 167(f)(3)] and § 1.197-2(c)(11) is determined by using the straight line method described in § 1.167(b)-1 (except that the salvage value is treated as zero) and an amortization period of 108 months beginning on the first day of the month that the rights are placed in service. Mortgage servicing rights are not depreciable to the extent the rights are stripped coupons under section 1286 [26 USCS § 1286].

(2) Treatment of rights acquired as a pool -- (i) In general. Except as provided in paragraph (d)(2)(ii) of this section, all mortgage servicing rights acquired in the same transaction or in a series of related transactions are treated as a single asset (the pool) for purposes of determining the depreciation deduction under this paragraph (d) and any gain or loss from the sale, exchange, or other disposition of the rights. Thus, if some (but not all) of the rights in a pool become worthless as a result of prepayments, no loss is recognized by reason of the prepayment and the adjusted basis of the pool is not affected by the unrecognized loss. Similarly, any amount realized from the sale or exchange of some (but not all) of the mortgage servicing rights is included in income and the adjusted basis of the pool is not affected by the realization.

(ii) Multiple accounts. If the taxpayer establishes multiple accounts within a pool at the time of its acquisition, gain or loss is recognized on the sale or exchange of all mortgage servicing rights within any such account.

(3) Additional rules. Rules similar to those in § 1.197-2(f)(1)(iii), (f)(1)(iv), and (f)(2) (relating to the computation of amortization deductions and the treatment of contingent amounts) apply for purposes of this paragraph (d).

(e) Effective dates -- (1) In general. This section applies to property acquired after January 25, 2000, except that § 1.167(a)-14(c)(2) (depreciation of the cost of certain separately acquired rights) and so much of § 1.167(a)-14(c)(3) as relates to § 1.167(a)-14(c)(2) apply to property acquired after August 10, 1993 (or July 25, 1991, if a valid retroactive election has been made under § 1.197-1T).

(2) Change in method of accounting. See § 1.197-2(l)(4) for rules relating to changes in method of accounting for property to which § 1.167(a)-14 applies. However, see § 1.168(k)-1(g)(4) or 1.1400L(b)-1(g)(4) for rules relating to changes in method of accounting for computer software to which the third sentence in § 1.167(a)-14(b)(1) applies.

(3) Qualified property, 50-percent bonus depreciation property, qualified New York Liberty Zone property, or section 179 [26 USCS § 179] property. This section also applies to computer

software that is qualified property under section 168(k)(2) [26 USCS § 168(k)(2)] or qualified New York Liberty Zone property under section 1400L(b) [26 USCS § 1400L(b)] acquired by a taxpayer after September 10, 2001, and to computer software that is 50-percent bonus depreciation property under section 168(k)(4) [26 USCS § 168(k)(4)] acquired by a taxpayer after May 5, 2003. This section also applies to computer software that is section 179 [26 USCS § 179] property placed in service by a taxpayer in a taxable year beginning after 2002 and before 2010.