taken into account in applying the 40-percent test, but the basis of the property is only taken into account on the later of the dates that the property is placed in service by the taxpayer during the taxable year. Further, *see* §1.168(i)–6T(c)(4)(v)(B) and §1.168(i)–6T(f) for rules relating to property placed in service and exchanged or involuntarily converted during the same taxable year.

(ii) The applicable convention, as determined under this section, applies to all depreciable property (except nonresidential real property, residential rental property, and any railroad grading or tunnel bore) placed in service by the taxpayer during the taxable year, excluding property placed in service and disposed of in the same taxable year. However, *see* §1.168(i)–6T(c)(4)(v)(A) and §1.168(i)–6T(f) for rules relating to MACRS property that has a basis determined under section 1031(d) or section 1033(b). No depreciation deduction is allowed for property placed in service and disposed of during the same taxable year. However, *see* §1.168(k)–1T(f)(1) for rules relating to qualified property or 50-percent bonus depreciation property, and §1.1400L(b)–1T(f)(1) for rules relating to qualified New York Liberty Zone property, that is placed in service by the taxpayer in the same taxable year in which either a partnership is terminated as a result of a technical termination under section 708(b)(1)(B) or the property is transferred in a transaction described in section 168(i)(7).

(b)(3)(iii) through (d)(1) For further guidance, *see* §1.168(d)–1(b)(3)(iii) through (d)(1).

(d)(2) *Qualified property, 50-percent bonus depreciation property, or qualified New York Liberty Zone property.* This section also applies to qualified property under section 168(k)(2) or qualified New York Liberty Zone property under section 1400L(b) acquired by a taxpayer after September 10, 2001, and to 50-percent bonus depreciation property under section 168(k)(4) acquired by a taxpayer after May 5, 2003. This section expires on September 4, 2006.

(3) *Like-kind exchanges and involuntary conversions.* (i) The last sentence in paragraph (b)(3)(i) and the second sentence in paragraph (b)(3)(ii) of this section apply to exchanges to which section 1031 applies, and involuntary conversions to which section 1033 applies, of MACRS property for which the time of disposition and the time of replacement both occur after February 27, 2004.

(ii) The applicability of this section expires on or before February 27, 2007.

[T.D. 9091, 68 FR 52991, Sept. 8, 2003; 68 FR 63734, Nov. 10, 2003; T.D. 9115, 69 FR 9533, Mar. 1, 2004]

§1.168(f)(8)–1T Safe-harbor lease information returns concerning qualified mass commuting vehicles (temporary).

In general. Form 6793, Safe Harbor Lease Information Return, is obsolete for safe harbor lease agreements executed after June 30, 1985. The parties to a safe harbor lease agreement under section 168(f)(8) executed after June 30, 1985 must file with their timely filed (including extensions) Federal income tax returns for the taxable year during which the lease term begins a statement containing the following information:

(a) The name, address, and taxpayer identification number of the lessor and the lessee;

(b) A description of the property with respect to which safe-harbor lease treatment is claimed;

(c) The date on which the lessee places the property in service, the date on which the lease begins, and the term of the lease;

(d) The recovery property class of the leased property under section 168(c)(2) (for example, 5-year);

(e) The terms of the payments between the parties to the lease transaction;

(f) The unadjusted basis of the property as defined in section 168(d)(1) and its adjusted basis as determined under §5c.168(f)(8)–6(b)(3); and

(g) If the lessor is a partnership or grantor trust, the name, address, and taxpayer identification number of the partners or beneficiaries and the service center at which the income tax return of each partner or beneficiary is filed.

The lessor's failure to file the above-described statement shall void such agreement as a safe-harbor lease under

section 168(f)(8) as of the date of the execution of the lease agreement. For rules regarding extensions of time for filing elections, see §1.9100–1.

[T.D. 8033, 50 FR 27224, July 2, 1985]

§1.168(h)–1 Like-kind exchanges involving tax-exempt use property.

(a) *Scope.* (1) This section applies with respect to a direct or indirect transfer of property among related persons, including transfers made through a qualified intermediary (as defined in §1.1031(k)–1(g)(4)) or other unrelated person, (a transfer) if—

(i) Section 1031 applies to any party to the transfer or to any related transaction; and

(ii) A principal purpose of the transfer or any related transaction is to avoid or limit the application of the alternative depreciation system (within the meaning of section 168(g)).

(2) For purposes of this section, a person is related to another person if they bear a relationship specified in section 267(b) or section 707(b)(1).

(b) *Allowable depreciation deduction for property subject to this section*—(1) *In general.* Property (tainted property) transferred directly or indirectly to a taxpayer by a related person (related party) as part of, or in connection with, a transaction in which the related party receives tax-exempt use property (related tax-exempt use property) will, if the tainted property is subject to an allowance for depreciation, be treated in the same manner as the related tax-exempt use property for purposes of determining the allowable depreciation deduction under section 167(a). Under this paragraph (b), the tainted property is depreciated by the taxpayer over the remaining recovery period of, and using the same depreciation method and convention as that of, the related tax-exempt use property.

(2) *Limitations*—(i) *Taxpayer's basis in related tax-exempt use property.* The rules of this paragraph (b) apply only with respect to so much of the taxpayer's basis in the tainted property as does not exceed the taxpayer's adjusted basis in the related tax-exempt use property prior to the transfer. Any excess of the taxpayer's basis in the tainted property over its adjusted basis in the related tax-exempt use property prior to the transfer is treated as property to which this section does not apply. This paragraph (b)(2)(i) does not apply if the related tax-exempt use property is not acquired from the taxpayer (e.g., if the taxpayer acquires the tainted property for cash but section 1031 nevertheless applies to the related party because the transfer involves a qualified intermediary).

(ii) *Application of section 168(i)(7).* This section does not apply to so much of the taxpayer's basis in the tainted property as is subject to section 168(i)(7).

(c) *Related tax-exempt use property.* (1) For purposes of paragraph (b) of this section, related tax-exempt use property includes—

(i) Property that is tax-exempt use property (as defined in section 168(h)) at the time of the transfer; and

(ii) Property that does not become tax-exempt use property until after the transfer if, at the time of the transfer, it was intended that the property become tax-exempt use property.

(2) For purposes of determining the remaining recovery period of the related tax-exempt use property in the circumstances described in paragraph (c)(1)(ii) of this section, the related tax-exempt use property will be treated as having, prior to the transfer, a lease term equal to the term of any lease that causes such property to become tax-exempt use property.

(d) *Examples.* The following examples illustrate the application of this section. The examples do not address common law doctrines or other authorities that may apply to recharacterize or alter the effects of the transactions described therein. Unless otherwise indicated, parties to the transactions are not related to one another.

Example 1. (i) X owns all of the stock of two subsidiaries, B and Z. X, B and Z do not file a consolidated federal income tax return. On May 5, 1995, B purchases an aircraft (*FA*) for $1 million and leases it to a foreign airline whose income is not subject to United States taxation and which is a tax-exempt entity as defined in section 168(h)(2). On the same date, Z owns an aircraft (*DA*) with a fair market value of $1 million, which has been, and continues to be, leased to an airline that is a United States taxpayer. Z's adjusted basis in DA is $0. The next day, at a time when each aircraft is still worth $1 million,