

such returns. In 1969 upon audit of B's taxable years 1966 through 1968, B exercised his option to be examined under the provisions of Revenue Procedure 62-21. The Revenue Agent's report shows that B was examined under Revenue Procedure 62-21 for taxable years 1966 through 1968. B will be treated under subdivision (ii)(b) of this subparagraph as having adopted Revenue Procedure 62-21 for such years prior to January 12, 1971.

*Example (3).* The facts are the same as in example (2) except that B did not upon examination by the Revenue Agent in 1969 exercise his option to be examined under Revenue Procedure 62-21. B has six accounts in the guideline class, Nos. 1 through 6. The Revenue Agent proposed to lengthen the depreciable lives on accounts Nos. 2 and 3 from 8 years to 12 years. In proceedings before the Appellate Division in 1970, B exercised his option to be examined under the provisions of Revenue Procedure 62-21. This is shown by correspondence between B and the Appellate Conferee as well as by other documents in the case before the Appellate Division. The case was settled on that basis before the Appellate Division without adjustment of the depreciable lives for B's accounts Nos. 2 and 3. B will be treated under subdivision (ii) (b) of this subparagraph as having adopted Revenue Procedure 62-21 for taxable years 1966 through 1968 prior to January 12, 1971.

*Example (4).* Corporation X uses the calendar year as its taxable year and has assets in Group Two, Class 5, of Revenue Procedure 62-21. Beginning in 1964, corporation X used the guideline life of 10 years as the depreciable life for all assets in the guideline class. In 1967, corporation X's taxable years 1964 through 1966 were examined and corporation X exercised its option to be examined under the provisions of Revenue Procedure 62-21. Corporation X did not adopt Revenue Procedure 62-21 on any of its income tax returns, for the years 1964 through 1970. Corporation X has not been examined since 1967, but has continued to use the guideline life of 10 years for all property in the guideline class including additions since 1966. Corporation X will be treated under subdivision (ii) (c) and (d) of this subparagraph as having adopted Revenue Procedure 62-21 prior to January 12, 1971, for taxable years 1964 through 1970.

*Example (5).* Corporation Y uses the calendar year as its taxable year and has asset in Group Two, Class 5, of Revenue Procedure 62-21. Since 1964, corporation Y has used various depreciable lives, based on the facts and circumstances, for different accounts in the guideline class. Corporation Y was examined in 1968 for taxable years 1965 through 1967. Corporation Y was also examined in 1970 for taxable years 1968 and 1969. Corporation Y did not exercise its option to be examined under the provisions of Revenue Procedure 62-21. Corporation Y has not adopted Rev-

enue Procedure 62-21 on any income tax return. For taxable years 1964 through 1970, corporation Y's class life (within the meaning of section 4, Part II, of Revenue Procedure 62-21) was between 12 and 14 years. In August of 1971, corporation Y filed amended income tax returns for 1968 and 1969, and an income tax return for 1970, using a depreciable life of 10 years (equal to the guideline life) for all assets in the guideline class. Corporation Y will not be treated as having adopted Revenue Procedure 62-21 prior to January 12, 1971.

*Example (6).* Corporation Z uses the calendar year as its taxable year and has assets in group 2, class 5, of Revenue Procedure 62-21. Corporation Z adopted Revenue Procedure 62-21 for this guideline class by expressly so indicating on its tax return for 1966, which was filed before January 12, 1971. Corporation Z computed its allowable depreciation for 1966 as if it adopted Revenue Procedure 62-21 for this guideline class for its taxable years 1962 through 1965, although it had earlier filed its tax returns for those years without regard to Revenue Procedure 62-21. The depreciation thus claimed in 1966 was less than what would have been allowable if corporation Z first adopted Revenue Procedure 62-21 in 1966. This was the result of certain accounts becoming fully depreciated through use of Revenue Procedure 62-21 in computing depreciation for 1962 through 1965. In addition, in deferred tax accounting procedures employed before January 12, 1971, for financial reporting purposes, corporation Z calculated its tax deferrals on the basis that it had adopted Revenue Procedure 62-21 for the years 1962 through 1965. Corporation Z will be treated under subdivision (i) (c) of this subparagraph as having adopted Revenue Procedure 62-21 for taxable years 1962 through 1965 prior to January 12, 1971.

(Sec. 167(m), 85 Stat. 508 (26 U.S.C. 167))

[T.D. 7278, 38 FR 14923, June 7, 1973, as amended by T.D. 7315, 39 FR 20195, June 7, 1974; T.D. 7517, 42 FR 58934, Nov. 14, 1977]

#### **§ 1.167(a)-13T Certain elections for intangible property (temporary).**

For rules applying the elections under section 13261(g) (2) and (3) of the Omnibus Budget Reconciliation Act of 1993 to intangible property described in section 167(f), see § 1.197-1T.

[59 FR 11922, Mar. 15, 1994]

#### **§ 1.167(a)-14 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 (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) and intangibles otherwise excluded from section 197 are amortizable only if they qualify as property subject to the allowance for depreciation under section 167(a).

(b) *Computer software*—(1) *In general.* The amount of the deduction for computer software described in section 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. If costs for developing computer software that the taxpayer properly elects to defer under section 174(b) result in the development of property subject to the allowance for depreciation under section 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 where these costs are separately stated and the costs are required to be capitalized under section 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) 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) 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 an 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) 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) (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) 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.

(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 date*—(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.

[T.D. 8867, 65 FR 3825, Jan. 25, 2000]

#### § 1.167(b)-0 Methods of computing depreciation.

(a) *In general.* Any reasonable and consistently applied method of computing depreciation may be used or continued in use under section 167. Regardless of the method used in computing depreciation, deductions for depreciation shall not exceed such amounts as may be necessary to recover the unrecovered cost or other basis less salvage during the remaining useful life of the property. The reasonableness of any claim for depreciation shall be determined upon the basis of conditions known to exist at the end of the period for which the return is made. It is the responsibility of the taxpayer to establish the reasonableness of the deduction for depreciation claimed. Generally, depreciation deductions so claimed will be changed only where there is a clear and convincing basis for a change.

(b) *Certain methods.* Methods previously found adequate to produce a reasonable allowance under the Internal Revenue Code of 1939 or prior revenue laws will, if used consistently by the taxpayer, continue to be acceptable

under section 167(a). Examples of such methods which continue to be acceptable are the straight line method, the declining balance method with the rate limited to 150 percent of the applicable straight line rate, and under appropriate circumstances, the unit of production method. The methods described in section 167(b) and §§ 1.167(b)-1, 1.167(b)-2, 1.167(b)-3, and 1.167(b)-4 shall be deemed to produce a reasonable allowance for depreciation except as limited under section 167(c) and § 1.167(c)-1. See also § 1.167(e)-1 for rules relating to change in method of computing depreciation.

(c) *Application of methods.* In the case of item accounts, any method which results in a reasonable allowance for depreciation may be selected for each item of property, but such method must thereafter be applied consistently to that particular item. In the case of group, classified, or composite accounts, any method may be selected for each account. Such method must be applied to that particular account consistently thereafter but need not necessarily be applied to acquisitions of similar property in the same or subsequent years, provided such acquisitions are set up in separate accounts. See, however, § 1.167(e)-1 and section 446 and the regulations thereunder, for rules relating to changes in the method of computing depreciation, and § 1.167(c)-1 for restriction on the use of certain methods. See also § 1.167(a)-7 for definition of account.

#### § 1.167(b)-1 Straight line method.

(a) *In general.* Under the straight line method the cost or other basis of the property less its estimated salvage value is deductible in equal annual amounts over the period of the estimated useful life of the property. The allowance for depreciation for the taxable year is determined by dividing the adjusted basis of the property at the beginning of the taxable year, less salvage value, by the remaining useful life of the property at such time. For convenience, the allowance so determined may be reduced to a percentage or fraction. The straight line method may be used in determining a reasonable allowance for depreciation for any property which is subject to depreciation