

179A(e)(4)), general asset account treatment for the asset terminates as of the first day of the taxable year in which the recapture event occurs. Consequently, the taxpayer must remove the asset from the general asset account as of that day and must make the adjustments to the general asset account described in paragraph (e)(3)(iii)(C)(2) through (4) of this section.

(h) *Changes in use*—(1) *Conversion to personal use*. An asset in a general asset account becomes ineligible for general asset account treatment if a taxpayer uses the asset in a personal activity during a taxable year. Upon a conversion to personal use, the taxpayer must remove the asset from the general asset account as of the first day of the taxable year in which the change in use occurs and must make the adjustments to the general asset account described in paragraph (e)(3)(iii)(C)(2) through (4) of this section.

(2) *Other changes in use*. [Reserved].

(i) *Identification of disposed or converted asset*. [Reserved]. For further guidance, see § 1.168(i)-1T(i).

(j) *Effect of adjustments on prior dispositions*. [Reserved]. For further guidance, see § 1.168(i)-1T(j).

(k) *Election*—(1) *Irrevocable election*. If a taxpayer makes an election under this paragraph (k), the taxpayer consents to, and agrees to apply, all of the provisions of this section to the assets included in a general asset account. Except as provided in paragraph (c)(1)(ii)(A), (e)(3), (g), or (h)(1) of this section, an election made under this section is irrevocable and will be binding on the taxpayer for computing taxable income for the taxable year for which the election is made and for all subsequent taxable years. An election under this paragraph (k) is made separately by each person owning an asset to which this section applies (for example, by each member of a consolidated group, at the partnership level (and not by the partner separately), or at the S corporation level (and not by the shareholder separately)).

(2) *Time for making election*. The election to apply this section shall be made on the taxpayer's timely filed (including extensions) income tax return for the taxable year in which the assets in-

cluded in the general asset account are placed in service by the taxpayer.

(3) *Manner of making election*. In the year of election, a taxpayer makes the election under this section by typing or legibly printing at the top of the Form 4562, "GENERAL ASSET ACCOUNT ELECTION MADE UNDER SECTION 168(i)(4)," or in the manner provided for on Form 4562 and its instructions. The taxpayer shall maintain records (for example, "General Asset Account #1 - all 1995 additions in asset class 00.11 for Salt Lake City, Utah facility") that identify the assets included in each general asset account, that establish the unadjusted depreciable basis and depreciation reserve of the general asset account, and that reflect the amount realized during the taxable year upon dispositions from each general asset account. (But see section 179(c) and § 1.179-5 for the record-keeping requirements for section 179 property.) The taxpayer's record-keeping practices should be consistently applied to the general asset accounts. If Form 4562 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

(l) *Effective date*. [Reserved] For further guidance, see § 1.168(i)-1T(l).

[T.D. 8566, 59 FR 51371, Oct. 11, 1994; 59 FR 64849, Dec. 16, 1994, as amended by T.D. 9115, 69 FR 9534, Mar. 1, 2004]

#### § 1.168(i)-1T General asset accounts (temporary).

(a) through (c)(2)(ii)(D) [Reserved]. For further guidance, see § 1.168(i)-1(a) through (c)(2)(ii)(D).

(c)(2)(ii)(E) [Reserved].

(d)(1) [Reserved]. For further guidance, see § 1.168(i)-1(d)(1).

(2) *Special rule for passenger automobiles*. For purposes of applying section 280F(a), the depreciation allowance for a general asset account established for passenger automobiles is limited for each taxable year to the amount prescribed in section 280F(a) multiplied by the excess of the number of automobiles originally included in the account over the number of automobiles disposed of during the taxable year or in any prior taxable year in a transaction described in paragraph

(e)(3)(iii) (disposition of an asset in a qualifying disposition), (e)(3)(iv) (transactions subject to section 168(i)(7)), (e)(3)(v) (transactions subject to section 1031 or 1033), (e)(3)(vi) (anti-abuse rule), (g) (assets subject to recapture), or (h)(1) (conversion to personal use) of this section.

(e)(1) through (e)(2) [Reserved]. For further guidance, see § 1.168(i)-1(e)(1) through (e)(2).

(e)(3) *Special rules*—(i) *In general.* This paragraph (e)(3) provides the rules for terminating general asset account treatment upon certain dispositions. While the rules under paragraphs (e)(3)(ii) and (iii) of this section are optional rules, the rules under paragraphs (e)(3)(iv), (v), and (vi) of this section are mandatory rules. A taxpayer applies paragraph (e)(3)(ii) or (iii) of this section by reporting the gain, loss, or other deduction on the taxpayer's timely filed Federal income tax return (including extensions) for the taxable year in which the disposition occurs. For purposes of applying paragraph (e)(3)(iii) through (vi) of this section, see paragraph (i) of this section for identifying the unadjusted depreciable basis of a disposed asset.

(e)(3)(ii) through (e)(3)(iii)(B)(3) [Reserved]. For further guidance, see § 1.168(i)-1(e)(3)(ii) through (e)(3)(iii)(B)(3).

(e)(3)(iii)(B)(4) A transaction, other than a transaction described in paragraph (e)(3)(iv) of this section (pertaining to transactions subject to section 168(i)(7) and (e)(3)(v) of this section (pertaining to transactions subject to section 1031 or 1033), to which a non-recognition section of the Code applies (determined without regard to this section).

(e)(3)(iii)(C) through (e)(3)(iv) [Reserved]. For further guidance, see § 1.168(i)-1(e)(iii)(C) through (e)(3)(iv).

(e)(3)(v) *Transactions subject to section 1031 or section 1033*—(A) *Like-kind exchange or involuntary conversion of all assets remaining in a general asset account.* If all the assets, or the last asset, in a general asset account are transferred by a taxpayer in a like-kind exchange (as defined under § 1.168-6T(b)(11)) or in an involuntary conversion (as defined under § 1.168-6T(b)(12)), the taxpayer must apply this para-

graph (e)(3)(v)(A) (instead of applying paragraph (e)(2), (e)(3)(ii), or (e)(3)(iii) of this section). Under this paragraph (e)(3)(v)(A), the general asset account terminates as of the first day of the year of disposition (as defined in § 1.168(i)-6T(b)(5)) and—

(1) The amount of gain or loss for the general asset account is determined under section 1001(a) by taking into account the adjusted depreciable basis of the general asset account at the time of disposition (as defined in § 1.168(i)-6T(b)(3)). The depreciation allowance for the general asset account in the year of disposition is determined in the same manner as the depreciation allowance for the relinquished MACRS property (as defined in § 1.168(i)-6T(b)(2)) in the year of disposition is determined under § 1.168(i)-6T. The recognition and character of gain or loss are determined in accordance with paragraph (e)(3)(ii)(A) of this section (notwithstanding that paragraph (e)(3)(ii) of this section is an optional rule); and

(2) The adjusted depreciable basis of the general asset account at the time of disposition is treated as the adjusted depreciable basis of the relinquished MACRS property.

(B) *Like-kind exchange or involuntary conversion of less than all assets remaining in a general asset account.* If an asset in a general asset account is transferred by a taxpayer in a like-kind exchange or in an involuntary conversion and if paragraph (e)(3)(v)(A) of this section does not apply to this asset, the taxpayer must apply this paragraph (e)(3)(v)(B) (instead of applying paragraph (e)(2), (e)(3)(ii), or (e)(3)(iii) of this section). Under this paragraph (e)(3)(v)(B), general asset account treatment for the asset terminates as of the first day of the year of disposition (as defined in § 1.168(i)-6T(b)(5)), and—

(1) The amount of gain or loss for the asset is determined by taking into account the asset's adjusted basis at the time of disposition (as defined in § 1.168(i)-6T(b)(3)). The adjusted basis of the asset at the time of disposition equals the unadjusted depreciable basis

of the asset less the depreciation allowed or allowable for the asset, computed by using the depreciation method, recovery period, and convention applicable to the general asset account in which the asset was included. The depreciation allowance for the asset in the year of disposition is determined in the same manner as the depreciation allowance for the relinquished MACRS property (as defined in § 1.168(i)-6T(b)(2)) in the year of disposition is determined under § 1.168(i)-6T. The recognition and character of the gain or loss are determined in accordance with paragraph (e)(3)(iii)(A) of this section (notwithstanding that paragraph (e)(3)(iii) of this section is an optional rule); and

(2) As of the first day of the year of disposition, the taxpayer must remove the relinquished asset from the general asset account and make the adjustments to the general asset account described in paragraph (e)(3)(iii)(C)(2) through (4) of this section.

(e)(3)(vi) *Anti-abuse rule*—(A) *In general*. If an asset in a general asset account is disposed of by a taxpayer in a transaction described in paragraph (e)(3)(vi)(B) of this section, general asset account treatment for the asset terminates as of the first day of the taxable year in which the disposition occurs. Consequently, the taxpayer must determine the amount of gain, loss, or other deduction attributable to the disposition in the manner described in paragraph (e)(3)(iii)(A) of this section (notwithstanding that paragraph (e)(3)(iii)(A) of this section is an optional rule) and must make the adjustments to the general asset account described in paragraph (e)(3)(iii)(C)(1) through (4) of this section.

(B) *Abusive transactions*. A transaction is described in this paragraph (e)(3)(vi)(B) if the transaction is not described in paragraph (e)(3)(iv) or (e)(3)(v) of this section and the transaction is entered into, or made, with a principal purpose of achieving a tax benefit or result that would not be available absent an election under this section. Examples of these types of transactions include—

(1) A transaction entered into with a principal purpose of shifting income or deductions among taxpayers in a man-

ner that would not be possible absent an election under this section in order to take advantage of differing effective tax rates among the taxpayers; or

(2) An election made under this section with a principal purpose of disposing of an asset from a general asset account in order to utilize an expiring net operating loss or credit. The fact that a taxpayer with a net operating loss carryover or a credit carryover transfers an asset to a related person or transfers an asset pursuant to an arrangement where the asset continues to be used (or is available for use) by the taxpayer pursuant to a lease (or otherwise) indicates, absent strong evidence to the contrary, that the transaction is described in this paragraph (e)(3)(vi)(B).

(f) *Assets generating foreign source income*—(1) *In general*. This paragraph (f) provides the rules for determining the source of any income, gain, or loss recognized, and the appropriate section 904(d) separate limitation category or categories for any foreign source income, gain, or loss recognized, on a disposition (within the meaning of paragraph (e)(1) of this section) of an asset in a general asset account that consists of assets generating both United States and foreign source income. These rules apply only to a disposition to which paragraph (e)(2) (general disposition rules), (e)(3)(ii) (disposition of all assets remaining in a general asset account), (e)(3)(iii) (disposition of an asset in a qualifying disposition), (e)(3)(v) (transactions subject to section 1031 or 1033), or (e)(3)(vi) (anti-abuse rule) of this section applies.

(2) *Source of ordinary income, gain or loss*—(i) *Source determined by allocation and apportionment of depreciation allowed*. The amount of any ordinary income, gain, or loss that is recognized on the disposition of an asset in a general asset account must be apportioned between United States and foreign sources based on the allocation and apportionment of the—

(A) Depreciation allowed for the general asset account as of the end of the taxable year in which the disposition occurs if paragraph (e)(2) of this section applies to the disposition;

(B) Depreciation allowed for the general asset account as of the time of disposition if the taxpayer applies paragraph (e)(3)(ii) of this section to the disposition of all assets, or the last asset, in the general asset account, or if all the assets, or the last asset, in the general asset account are disposed of in a transaction described in paragraph (e)(3)(v)(A) of this section; or

(C) Depreciation allowed for the disposed asset for only the taxable year in which the disposition occurs if the taxpayer applies paragraph (e)(3)(iii) of this section to the disposition of the asset in a qualifying disposition, if the asset is disposed of in a transaction described in paragraph (e)(3)(v)(B) of this section (like-kind exchange or involuntary conversion), or if the asset is disposed in a transaction described in paragraph (e)(3)(vi) of this section (anti-abuse rule).

(f)(2)(ii) through (h) [Reserved]. For further guidance, see § 1.168(i)-1(f)(2)(ii) through (h).

(i) *Identification of disposed or converted asset.* A taxpayer may use any reasonable method that is consistently applied to the taxpayer's general asset accounts for purposes of determining the unadjusted depreciable basis of a disposed or converted asset in a transaction described in paragraph (e)(3)(iii) (disposition of an asset in a qualifying disposition), (e)(3)(iv) (transactions subject to section 168(i)(7)), (e)(3)(v) (transactions subject to section 1031 or 1033), (e)(3)(vi) (anti-abuse rule), (g) (assets subject to recapture), or (h)(1) (conversion to personal use) of this section.

(j) *Effect of adjustments on prior dispositions.* The adjustments to a general asset account under paragraph (e)(3)(iii), (e)(3)(iv), (e)(3)(v), (e)(3)(vi), (g), or (h)(1) of this section have no effect on the recognition and character of prior dispositions subject to paragraph (e)(2) of this section.

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

(l) *Effective date*—(1) *In general.* Except as provided in paragraphs (l)(2) and (l)(3) of this section, this section applies to depreciable assets placed in service in taxable years ending on or after October 11, 1994. For depreciable assets placed in service after December

31, 1986, in taxable years ending before October 11, 1994, the Internal Revenue Service will allow any reasonable method that is consistently applied to the taxpayer's general asset accounts.

(2) [Reserved].

(3) *Like-kind exchanges and involuntary conversions.* (i) This section applies for an asset transferred by a taxpayer in a like-kind exchange (as defined under § 1.168-6T(b)(11)) or in an involuntary conversion (as defined under § 1.168-6T(b)(12)) for which the time of disposition (as defined in § 1.168(i)-6T(b)(3)) and the time of replacement (as defined in § 1.168(i)-6T(b)(4)) both occur after February 27, 2004. For an asset transferred by a taxpayer in a like-kind exchange or in an involuntary conversion for which the time of disposition, the time of replacement, or both occur on or before February 27, 2004, see § 1.168(i)-1 in effect prior to February 27, 2004, (§ 1.168(i)-1 as contained in 26 CFR part 1 edition revised as of April 1, 2003).

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

[T.D. 9115, 69 FR 9535, Mar. 1, 2004]

#### § 1.168(i)-2 Lease term.

(a) *In general.* For purposes of section 168, a lease term is determined under all the facts and circumstances. Paragraph (b) of this section and § 1.168(j)-1T, Q&A 17, describe certain circumstances that will result in a period of time not included in the stated duration of an original lease (additional period) nevertheless being included in the lease term. These rules do not prevent the inclusion of an additional period in the lease term in other circumstances.

(b) *Lessee retains financial obligation*—(1) *In general.* An additional period of time during which a lessee may not continue to be the lessee will nevertheless be included in the lease term if the lessee (or a related person)—

(i) Has agreed that one or both of them will or could be obligated to make a payment of rent or a payment in the nature of rent with respect to such period; or

(ii) Has assumed or retained any risk of loss with respect to the property for such period (including, for example, by holding a note secured by the property).