

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1****[REG-168745-03]****RIN 1545-BE18****Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations, notice of public hearing, and withdrawal of previously proposed regulations.

**SUMMARY:** Appearing elsewhere in this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance on the application of sections 162(a) and 263(a) of the Internal Revenue Code (Code) to amounts paid to acquire, produce, or improve tangible property. The temporary regulations clarify and expand the standards in the current regulations under sections 162(a) and 263(a), and provide certain bright-line tests (for example, a de minimis rule for certain acquisitions) for applying these standards. The temporary regulations also provide guidance under section 168 regarding the accounting for, and dispositions of, property subject to section 168. The temporary regulations also amend the general asset account regulations. The temporary regulations will affect all taxpayers that acquire, produce, or improve tangible property. The text of the temporary regulations published in the **Federal Regulations** also serves as the text of these proposed regulations. This document also provides notice of public hearing on these proposed regulations and withdraws the proposed regulations published in the **Federal Register** on March 10, 2008 (73 FR 47).

**DATES:** Written and/or electronic comments and requests for a public hearing must be received by March 26, 2012. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for April 4, 2012 at 10 a.m., must be received by March 21, 2012.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-168745-03), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. 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-168745-

03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-168745-03). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations under sections 162 and 263, Merrill D. Feldstein and Alan Williams, Office of Associate Chief Counsel (Income Tax and Accounting) (202) 622-4950; concerning the proposed regulations under sections 165, 167, 168, 263A, and 1016, Kathleen Reed and Patrick Clinton, Office of Associate Chief Counsel (Income Tax and Accounting) (202) 622-4930; and concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov).

**SUPPLEMENTARY INFORMATION:****Background and Explanation of Provisions**

Temporary regulations appearing elsewhere of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 162, 165, 167, 168, 263(a), 263A, and 1016. The temporary regulations set forth rules relating to amounts paid to acquire, produce, or improve tangible property. The temporary regulations also provide guidance regarding the accounting for, and dispositions of, property subject to section 168. The temporary regulations also amend the general asset account regulations. The text of the temporary 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, as supplemented by Executive Order 13563. 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 the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this regulation has been

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. Comments are requested on all aspects of the proposed rules. In addition, 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 April 4, 2012, beginning at 10 a.m. in the IRS Auditorium, 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 electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 21, 2012. 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 Merrill D. Feldstein and Katherine Reed, Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

**Withdrawal of Proposed Amendments to the Regulations**

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-168745-03) published

in the **Federal Register** on March 10, 2008, (73 FR 46) is withdrawn.

### Proposed Amendment 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 is amended by adding an entry in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

Section 1.168(i)–1T also issued under 26 U.S.C. 168(i)(4). \* \* \*

**Par. 2.** Section 1.162–3 is revised to read as follows:

### § 1.162–3 Materials and Supplies.

[The text of the proposed amendments to § 1.162–3 is the same as the text of § 1.162–3T(a) through (i) published elsewhere in this issue of the **Federal Register**].

**Par. 3.** Section 1.162–4 is revised to read as follows:

### § 1.162–4 Repairs.

[The text of the proposed amendments to § 1.162–4 is the same as the text of § 1.162–4T(a) through (c) published elsewhere in this issue of the **Federal Register**].

### § 1.162–6 [Removed]

**Par. 4.** Section 1.162–6 is removed.

**Par. 5.** Section 1.162–11 is amended by:

1. Revising paragraph (b).
2. Adding paragraph (c).

The revision and addition reads as follows:

### § 1.162–11 Rentals.

\* \* \* \* \*

(b) [The text of the proposed amendments to § 1.162–11(b) is the same as the text of § 1.162–11T(b) published elsewhere in this issue of the **Federal Register**].

(c) [The text of the proposed amendments to § 1.162–11(c) is the same as the text of § 1.162–11T(c) published elsewhere in this issue of the **Federal Register**].

**Par. 6.** Section 1.165–2 is amended by:

1. Revising paragraph (c).
2. Adding paragraph (d).

The addition and revision read as follows:

### § 1.165–2 Obsolescence of nondepreciable property.

\* \* \* \* \*

(c) [The text of the proposed amendments to § 1.165–2(c) is the same as the text of § 1.165–2T(c) published elsewhere in this issue of the **Federal Register**].

(d) [The text of the proposed amendments to § 1.165–2(d) is the same as the text of § 1.165–2T(d) published elsewhere in this issue of the **Federal Register**].

**Par. 7.** Section 1.167(a)–4 is revised to read as follows:

### § 1.167(a)–4 Leased property.

[The text of the proposed amendments to § 1.167(a)–4 is the same as the text of § 1.167(a)–4T(a) through (b)(4) published elsewhere in this issue of the **Federal Register**].

**Par. 8.** Section 1.167(a)–7 is amended by adding paragraphs (e) and (f) to read as follows:

### § 1.167(a)–7 Accounting for depreciable property.

\* \* \* \* \*

(e) [The text of the proposed amendments to § 1.167(a)–7(e) is the same as the text of § 1.167(a)–7T(e) published elsewhere in this issue of the **Federal Register**].

(f) [The text of the proposed amendments to § 1.167(a)–7(f) is the same as the text of § 1.167(a)–7T(f) published elsewhere in this issue of the **Federal Register**].

**Par. 9.** Section 1.167(a)–8 is amended by adding paragraphs (g) and (h). The addition reads as follows:

### § 1.167(a)–8 Retirements.

\* \* \* \* \*

(g) [The text of the proposed amendments to § 1.167(a)–8(g) is the same as the text of § 1.167(a)–8T(g) published elsewhere in this issue of the **Federal Register**].

(h) [The text of the proposed amendments to § 1.167(a)–8(h) is the same as the text of § 1.167(a)–8T(h) published elsewhere in this issue of the **Federal Register**].

**Par. 10.** Section 1.168(i)–0 is amended by:

1. Adding entries in the table of contents for paragraphs (b)(5), (b)(6), and (c)(3).
2. Redesignating the entry in the table of contents for paragraph (d)(2) as the entry for paragraph (d)(4) and adding paragraphs (d)(2) and (d)(3).
3. Redesignating the entry in the table of contents for paragraph (e)(2)(v) as the entry for (e)(2)(ix), and adding a new paragraph (e)(2)(v) and paragraphs (e)(2)(vi), (vii), and (viii).
4. Redesignating the entry in the table of contents for paragraph (e)(3)(vi) as the entry for paragraph (e)(3)(vii) and adding a new paragraph (e)(3)(vi).
5. Redesignating the entry in the table of contents for paragraph (h)(2) as the entry for paragraph (h)(3) and adding new paragraph (h)(2).

6. Removing the entries in the table of contents for paragraphs (l)(1), (2), and (3) and redesignating the entries in the table of contents for paragraphs (k)(1), (2), and (3) as the entries for paragraphs (l)(1), (2), and (3), respectively.

7. Redesignating the entry in the table of contents for paragraph (j) as the entry for paragraph (k) and redesignating the entry in the table of contents for paragraph (i) as paragraph (j), and adding a new paragraph (i).

8. Adding paragraph (m).

The additions read as follows:

### § 1.168(i)–0 Table of contents for the general asset account rules.

\* \* \* \* \*

### § 1.168(i)–1 General asset accounts.

\* \* \* \* \*

(b) \* \* \*

(5) and (6) [The entries in the table of contents for the proposed amendments to § 1.168(i)–1(b)(5) and (6) are the same as the entries in the table of contents for § 1.168(i)–1T(b)(5) and (6) published elsewhere in this issue of the **Federal Register**].

(c) \* \* \*

(3) [The entry in the table of contents for the proposed amendments to § 1.168(i)–1(c)(3) is the same as the entry in the table of contents for § 1.168(i)–1T(c)(3) published elsewhere in this issue of the **Federal Register**].

(d) \* \* \*

(2) and (3) [The entries in the table of contents for the proposed amendments to § 1.168(i)–1(d)(2) and (d)(3) are the same as the entries in the table of contents for § 1.168(i)–1T(d)(2) and (3) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(v) through (viii) [The entries in the table of contents for the proposed amendments to § 1.168(i)–1(e)(2)(v) through (viii) are the same as the entries in the table of contents for § 1.168(i)–1T(e)(2)(v) through (viii) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(e)(3) \* \* \*

(vi) [The entry in the table of contents for the proposed amendments to § 1.168(i)–1(e)(3)(vi) is the same as the entry in the table of contents for § 1.168(i)–1T(e)(3)(vi) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(h) \* \* \*

(2) [The entry in the table of contents for the proposed amendments to § 1.168(i)–1(h)(2) is the same as the

entry in the table of contents for § 1.168(i)–1T(h)(2) published elsewhere in this issue of the **Federal Register**.

\* \* \* \* \*

(i) [The entry in the table of contents for the proposed amendments to § 1.168(i)–1(i) is the same as the entry in the table of contents for § 1.168(i)–1T(i) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(m) [The entry in the table of contents for the proposed amendments to § 1.168(i)–1(m) is the same as the entry in the table of contents for § 1.168(i)–1T(m) published elsewhere in this issue of the **Federal Register**.]

**Par. 11.** Section 1.168(i)–1 is amended by:

1. Revising paragraphs (a) through (l)(1); and

2. Adding paragraph (m).

The revisions and additions read as follows:

**§ 1.168(i)–1 General asset accounts.**

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

\* \* \* \* \*

(m) [The text of the proposed amendments to § 1.168(i)–1(m) is the same as the text of § 1.168(i)–1T(m) published elsewhere in this issue of the **Federal Register**.]

**Par. 12.** Section 1.168(i)–7 is added to read as follows:

**§ 1.168(i)–7 Accounting for MACRS property.**

[The text of the proposed amendments to § 1.168(i)–7 is the same as the text of § 1.168(i)–7T published elsewhere in this issue of the **Federal Register**.]

**Par. 13.** Section 1.168(i)–8 is added to read as follows:

**§ 1.168(i)–8 Dispositions of MACRS property.**

[The text of the proposed amendments to § 1.168(i)–8 is the same as the text of § 1.168(i)–8T published elsewhere in this issue of the **Federal Register**.]

**Par. 14.** Section 1.263(a)–0 is amended by:

1. Revising the section headings to the table of contents for §§ 1.263(a)–2 and 1.263(a)–3.

2. Adding entries to the table of contents for §§ 1.263(a)–1, 1.263(a)–2, and 1.263(a)–3.

The revisions and additions read as follows:

**§ 1.263(a)–0 Table of contents.**

\* \* \* \* \*

*§ 1.263(a)–1 Capital expenditures; in general.*

(a) through (g) [The entries in the table of contents for the proposed amendments to § 1.263(a)–1(a) through (g) are the same as the entries in the table of contents for § 1.263(a)–1T(a) through (g) published elsewhere in this issue of the **Federal Register**.]

*§ 1.263(a)–2 Amounts paid to acquire or produce tangible property.*

(a) through (k) [The entries in the table of contents for the proposed amendments to § 1.263(a)–2(a) through (k) are the same as the entries in the table of contents for § 1.263(a)–2T(a) through (k) published elsewhere in this issue of the **Federal Register**.]

*§ 1.263(a)–3 Amounts paid to improve tangible property.*

(a) through (p) [The entries in the table of contents for the proposed amendments to § 1.263(a)–3(a) through (p) are the same as the entries in the table of contents for § 1.263(a)–3T(a) through (p) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

**Par. 15.** Section 1.263(a)–1 is revised to read as follows:

**§ 1.263(a)–1 Capital expenditures; in general.**

[The text of the proposed amendments to § 1.263(a)–1 is the same as the text of § 1.263(a)–1T published elsewhere in this issue of the **Federal Register**.]

**Par. 16.** Section 1.263(a)–2 is revised to read as follows:

**§ 1.263(a)–2 Amounts paid to acquire or produce tangible property.**

[The text of the proposed amendments to § 1.263(a)–2 is the same as the text of § 1.263(a)–2T published elsewhere in this issue of the **Federal Register**.]

**Par. 17.** Section 1.263(a)–3 is revised to read as follows:

**§ 1.263(a)–3 Amounts paid to improve tangible property.**

[The text of the proposed amendments to § 1.263(a)–3 is the same as the text of § 1.263(a)–3T published elsewhere in this issue of the **Federal Register**.]

**Par. 18.** Section 1.263(a)–6 is added to read as follows:

**§ 1.263(a)–6 Election to deduct or capitalize certain expenditures.**

[The text of the proposed amendments to § 1.263(a)–6 is the same as the text of § 1.263(a)–6T published elsewhere in this issue of the **Federal Register**.]

**Par. 19.** Section 1.263A–1 is amended by:

1. Adding paragraph (b)(14).

2. Revising paragraph (c)(4).

3. Revising paragraph (e)(2)(i)(A).

4. Revising paragraph (e)(3)(ii)(E).

5. Revising paragraph (l).

6. Adding paragraph (m).

The additions and revisions read as follows:

**§ 1.263A–1 Uniform capitalization of costs.**

\* \* \* \* \*

(b) \* \* \*

(14) [The text of the proposed amendments to § 1.263A–1(b)(14) is the same as the text of § 1.263A–1T(b)(14) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(c) \* \* \*

(4) [The text of the proposed amendments to § 1.263A–1(c)(4) is the same as the text of § 1.263A–1T(c)(4) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) [The text of the proposed amendments to § 1.263A–1(e)(2)(i)(A) is the same as the text of § 1.263A–1T(e)(2)(i)(A) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(3) \* \* \*

(ii) \* \* \*

(E) [The text of the proposed amendments to § 1.263A–1(e)(3)(ii)(E) is the same as the text of § 1.263A–1T(e)(3)(ii)(E) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(l) [The text of the proposed amendments to § 1.263A–1(l) is the same as the text of § 1.263A–1T(l) published elsewhere in this issue of the **Federal Register**.]

(m) [The text of the proposed amendments to § 1.263A–1(m) is the same as the text of § 1.263A–1T(m) published elsewhere in this issue of the **Federal Register**.]

**Par. 20.** Section 1.1016–3 is amended by:

1. Revising paragraphs (a)(1)(ii) and (j)(1).

2. Adding paragraph (j)(3).

The addition and revision read as follows:

**§ 1.1016–3 Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 13, 1913.**

(a) \* \* \*

(1) \* \* \*

(ii) [The text of the proposed amendments to § 1.1016–3(a)(1)(ii) is the same as the text of § 1.1016–3T(a)(1)(ii) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(j) \* \* \*

(1) [The text of the proposed amendments to § 1.1016-3(j)(1) is the same as the text of § 1.1016-3T(j)(1)

published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(3) [The text of the proposed amendments to § 1.1016-3T(j)(3) is the same as the text of § 1.1016-3T(j)(3)

published elsewhere in this issue of the **Federal Register**].

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

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