

and, on its 2001 and 2002 Federal tax returns, depreciated the remaining adjusted depreciable basis of the equipment under the general depreciation system under 168(a), using the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. In 2003, I2 realizes its failure to make the alternative depreciation system election in 2001 and files a Form 3115 to change its method of depreciating the remaining adjusted depreciable basis of the 2001 equipment to the alternative depreciation system. Because this equipment is not required to be depreciated under the alternative depreciation system, I2 is attempting to make an election under section 168(g)(7). However, this election must be made in the taxable year in which the equipment is placed in service (2001) and, consequently, I2 is attempting to make a late election under section 168(g)(7). Accordingly, I2's change to the alternative depreciation system is not a change in accounting method pursuant to paragraph (e)(2)(ii)(d)(3)(iii) of this section. Instead, I2 must submit a request for a private letter ruling under § 301.9100-3 of this chapter, requesting an extension of time to make the alternative depreciation system election on its 2001 Federal tax return.

(3) [Reserved]. For further guidance, see § 1.446-1(e)(3).

(4) *Effective date*—(i) *In general*. Except as provided in paragraphs (e)(3)(iii) and (e)(4)(ii) of this section, paragraph (e) of this section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, see § 1.446-1(e) in effect prior to December 30, 2003 (§ 1.446-1(e) as contained in 26 CFR part 1 edition revised as of April 1, 2003).

(ii) *Changes involving depreciable or amortizable assets*. With respect to paragraph (e)(2)(ii)(d) of this section, paragraph (e)(2)(iii) *Examples 9 through 17* of this section, the addition of the language “certain changes in computing depreciation or amortization (see paragraph (e)(2)(ii)(d) of this section)” to the last sentence of paragraph (e)(2)(ii)(a) of this section, and the removal of all language regarding useful life and the sentence “On the other hand, a correction to require depreciation in lieu of a deduction for the cost of a class of depreciable assets which had been consistently treated as an expense in the year of purchase involves the question of the proper timing of an item, and is to be treated as a change in method of accounting” from paragraph (e)(2)(ii)(b) of this section—

(A) For any change in depreciation or amortization that is a change in method of accounting, this section applies to such a change in method of accounting made for taxable years ending on or after December 30, 2003; and

(B) For any change in depreciation or amortization that is not a change in method of accounting, this section applies to such a change made for taxable years ending on or after December 30, 2003.

(iii) The applicability of paragraph (e) of this section expires on or before January 2, 2007.

■ **Par. 6.** Section 1.1016-3 is amended by:

■ 1. Redesignating paragraph (h) as paragraph (i).

■ 2. Adding new paragraphs (h) and (j).

The additions read as follows:

**§ 1.1016-3 Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 28, 1913.**

\* \* \* \* \*

(h) *Application to a change in method of accounting*. [Reserved]. For further guidance, see § 1.1016-3T(h).

\* \* \* \* \*

(j) *Effective date*. [Reserved]. For further guidance, see § 1.1016-3T(j)(1) and (2).

■ **Par. 7.** Section 1.1016-3T is added to read as follows:

**§ 1.1016-3T Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 28, 1913 (temporary).**

(a) through (g) [Reserved]. For further guidance, see § 1.1016-3(a) through (g).

(h) *Application to a change in method of accounting*. For purposes of determining whether a change in depreciation or amortization for property subject to section 167, 168, 197, 1400I, 1400L(b), or 1400L(c), or to section 168 prior to its amendment by the Tax Reform Act of 1986 (100 Stat. 2121) (former section 168) is a change in method of accounting under section 446(e) and the regulations under section 446(e), section 1016(a)(2) does not permanently affect a taxpayer's lifetime income.

(i) [Reserved]. For further guidance, see § 1.1016-3(i).

(j) *Effective date*—(1) *In general*. Except as provided in paragraph (j)(2) of this section, this section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, see § 1.1016-3 in effect prior to December 30, 2003 (§ 1.1016-3 as contained in 26 CFR part 1 edition revised as of April 1, 2003).

(2) *Depreciation or amortization changes*. Paragraph (h) of this section applies to a change in depreciation or amortization for property subject to section 167, 168, 197, 1400I, 1400L(b), or 1400L(c), or former section 168 for taxable years ending on or after December 30, 2003.

(3) The applicability of this section expires on or before January 2, 2007.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 18, 2003.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1, 20, 25, and 26

[TD 9102]

RIN 1545-AX96

### Definition of Income for Trust Purposes

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations revising the definition of income under section 643(b) of the Internal Revenue Code. The regulations are necessary to reflect changes in the definition of trust accounting income under state laws. The final regulations also clarify the situations in which capital gains are included in distributable net income under section 643(a)(3). Conforming amendments are made to regulations affecting ordinary trusts, pooled income funds, charitable remainder trusts, trusts that qualify for the gift and estate tax marital deduction, and trusts that are exempt from generation-skipping transfer taxes. The regulations affect the grantors, beneficiaries, and fiduciaries of trusts.

**DATES:** *Effective Date:* These regulations are effective January 2, 2004.

*Applicability date:* Generally, the final regulations are applicable to trusts and estates for taxable years ending after January 2, 2004. See revised §§ 1.642(c)-2, 1.642(c)-5, and 1.664-3 for special dates of applicability affecting those sections.

**FOR FURTHER INFORMATION CONTACT:** Bradford R. Poston at (202) 622-3060 (not a toll-free number).

### SUPPLEMENTARY INFORMATION:

#### Background

On February 15, 2001, proposed regulations (REG-106513-00) were published in the **Federal Register** [66 FR 10396] containing proposed amendments to the Income Tax