

Federal Tax Regulations, Regulation, §1.197-2, Internal Revenue Service, Amortization of goodwill and certain other intangibles

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(a) *Overview*

(1) *In general.*—

Section [197](#) allows an amortization deduction for the capitalized costs of an amortizable section [197](#) intangible and prohibits any other depreciation or amortization with respect to that property. Paragraphs (b), (c), and (e) of this section provide rules and definitions for determining whether property is a section [197](#) intangible, and paragraphs (d) and (e) of this section provide rules and definitions for determining whether a section [197](#) intangible is an amortizable section [197](#) intangible. The amortization deduction under section [197](#) is determined by amortizing basis ratably over a 15-year period under the rules of paragraph (f) of this section. Section [197](#) also includes various special rules pertaining to the disposition of amortizable section [197](#) intangibles, nonrecognition transactions, anti-churning rules, and anti-abuse rules. Rules relating to these provisions are contained in paragraphs (g), (h), and (j) of this section. Examples demonstrating the application of these provisions are contained in paragraph (k) of this section. The effective date of the rules in this section is contained in paragraph (l) of this section.

(2) *Section 167(f) property.*—

Section [167\(f\)](#) prescribes rules for computing the depreciation deduction for certain property to which section [197](#) does not apply. See § [1.167\(a\)-14](#) for rules under section 167(f) and paragraphs (c)(4), (6), (7), (11), and (13) of this section for a description of the property subject to section [167\(f\)](#).

(3) *Amounts otherwise deductible.*—

Section [197](#) does not apply to amounts that are not chargeable to capital account under paragraph (f)(3) (relating to basis determinations for covenants not to compete and certain contracts for the use of section 197 intangibles) of this section and are otherwise currently deductible. For this purpose, an amount described in § [1.162-11](#) is not currently deductible if, without regard to § [1.162-11](#), such amount is properly chargeable to capital account.

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(b)*Section 197 intangibles; in general.*—

Except as otherwise provided in paragraph (c) of this section, the term *section 197 intangible* means any property described in section [197\(d\)\(1\)](#). The following rules and definitions provide guidance concerning property that is a section [197](#) intangible unless an exception applies:

(1)*Goodwill.*—

Section [197](#) intangibles include goodwill. Goodwill is the value of a trade or business attributable to the expectancy of continued customer patronage. This expectancy may be due to the name or reputation of a trade or business or any other factor.

(2)*Going concern value.*—

Section [197](#) intangibles include going concern value. Going concern value is the additional value that attaches to property by reason of its existence as an integral part of an ongoing business activity. Going concern value includes the value attributable to the ability of a trade or business (or a part of a trade or business) to continue functioning or generating income without interruption notwithstanding a change in ownership, but does not include any of the intangibles described in any other provision of this paragraph (b). It also includes the value that is attributable to the immediate use or availability of an acquired trade or business, such as, for example, the use of the revenues or net earnings that otherwise would not be received during any period if the acquired trade or business were not available or operational.

(3)*Workforce in place.*—

Section [197](#) intangibles include workforce in place. Workforce in place (sometimes referred to as agency force or assembled workforce) includes the composition of a workforce (for example, the experience, education, or training of a workforce), the terms and conditions of employment whether contractual or otherwise, and any other value placed on employees or any of their attributes. Thus, the amount paid or incurred for workforce in place includes, for example, any portion of the purchase price of an acquired trade or business attributable to the existence of a highly-skilled workforce, an existing employment contract (or contracts), or a relationship with employees or consultants (including, but not limited to, any key employee contract or relationship). Workforce in place does not include any covenant not to compete or other similar arrangement described in paragraph (b)(9) of this section.

(4)*Information base.*—

Section [197](#) intangibles include any information base, including a customer-related information base. For this purpose, an information base includes business books and records, operating systems, and any other information base (regardless of the method of recording the information) and a customer-related information base is any information base that includes lists or other information with respect to current or prospective customers. Thus, the amount paid or incurred for information base includes, for example, any portion of the purchase price of an acquired trade or business attributable to the intangible value of technical manuals, training manuals or programs, data files, and accounting or inventory control systems. Other examples include the cost of acquiring customer lists, subscription lists, insurance expirations, patient or client files, or lists of newspaper, magazine, radio, or television advertisers.

(5)*Know-how, etc.*—

Section [197](#) intangibles include any patent, copyright, formula, process, design, pattern, know-how, format, package design, computer software (as defined in paragraph (c)(4)(iv) of this section), or interest in a film, sound recording, video tape, book, or other similar property. (See, however, the exceptions in paragraph (c) of this section.)

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(6)Customer-based intangibles.—

Section [197](#) intangibles include any customer-based intangible. A customer-based intangible is any composition of market, market share, or other value resulting from the future provision of goods or services pursuant to contractual or other relationships in the ordinary course of business with customers. Thus, the amount paid or incurred for customer-based intangibles includes, for example, any portion of the purchase price of an acquired trade or business attributable to the existence of a customer base, a circulation base, an undeveloped market or market growth, insurance in force, the existence of a qualification to supply goods or services to a particular customer, a mortgage servicing contract (as defined in paragraph (c)(11) of this section), an investment management contract, or other relationship with customers involving the future provision of goods or services. (See, however, the exceptions in paragraph (c) of this section.) In addition, customer-based intangibles include the deposit base and any similar asset of a financial institution. Thus, the amount paid or incurred for customer-based intangibles also includes any portion of the purchase price of an acquired financial institution attributable to the value represented by existing checking accounts, savings accounts, escrow accounts, and other similar items of the financial institution. However, any portion of the purchase price of an acquired trade or business attributable to accounts receivable or other similar rights to income for goods or services provided to customers prior to the acquisition of a trade or business is not an amount paid or incurred for a customer-based intangible.

(7)Supplier-based intangibles**(i)In general.—**

[Section 197](#) intangibles include any supplier-based intangible. A *supplier-based intangible* is the value resulting from the future acquisition, pursuant to contractual or other relationships with suppliers in the ordinary course of business, of goods or services that will be sold or used by the taxpayer. Thus, the amount paid or incurred for supplier-based intangibles includes, for example, any portion of the purchase price of an acquired trade or business attributable to the existence of a favorable relationship with persons providing distribution services (such as favorable shelf or display space at a retail outlet), or the existence of favorable supply contracts. The amount paid or incurred for supplier-based intangibles does not include any amount required to be paid for the goods or services themselves pursuant to the terms of the agreement or other relationship. In addition, see the exceptions in paragraph 2(c) of this section, including the exception in paragraph 2(c)(6) of this section for certain rights to receive tangible property or services from another person.

(ii)Applicability date.—

This section applies to supplier-based intangibles acquired after July 6, 2011.

(8)Licenses, permits, and other rights granted by governmental units.—

Section [197](#) intangibles include any license, permit, or other right granted by a governmental unit (including, for purposes of section [197](#), an agency or instrumentality thereof) even if the right is granted for an indefinite period or is reasonably expected to be renewed for an indefinite period. These rights include, for example, a liquor license, a taxi-cab medallion (or license), an airport landing or takeoff right (sometimes referred to as a slot), a regulated airline route, or a television or radio broadcasting license. The issuance or renewal of a license, permit, or other right granted by a governmental unit is considered an acquisition of the license, permit, or other right. (See, however, the exceptions in paragraph (c) of this section, including the exceptions in paragraph (c)(3) of this section for an interest in land, paragraph (c)(6) of this section for certain rights to receive tangible property or services, paragraph (c)(8) of this section for an interest under a lease of tangible property, and paragraph (c)(13) of this section for certain rights granted by a governmental unit. See paragraph (b)(10) of this section for the treatment of franchises.)

(9)Covenants not to compete and other similar arrangements.—

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Section [197](#) intangibles include any covenant not to compete, or agreement having substantially the same effect, entered into in connection with the direct or indirect acquisition of an interest in a trade or business or a substantial portion thereof. For purposes of this paragraph (b)(9), an acquisition may be made in the form of an asset acquisition (including a qualified stock purchase that is treated as a purchase of assets under section [338](#)), a stock acquisition or redemption, and the acquisition or redemption of a partnership interest. An agreement requiring the performance of services for the acquiring taxpayer or the provision of property or its use to the acquiring taxpayer does not have substantially the same effect as a covenant not to compete to the extent that the amount paid under the agreement represents reasonable compensation for the services actually rendered or for the property or use of the property actually provided.

(10) *Franchises, trademarks, and trade names*

(i)

Section [197](#) intangibles include any franchise, trademark, or trade name. The term *franchise* has the meaning given in section 1253(b)(1) and includes any agreement that provides one of the parties to the agreement with the right to distribute, sell, or provide goods, services, or facilities, within a specified area. The term *trademark* includes any word, name, symbol, or device, or any combination thereof, adopted and used to identify goods or services and distinguish them from those provided by others. The term *trade name* includes any name used to identify or designate a particular trade or business or the name or title used by a person or organization engaged in a trade or business. A license, permit, or other right granted by a governmental unit is a franchise if it otherwise meets the definition of a franchise. A trademark or trade name includes any trademark or trade name arising under statute or applicable common law, and any similar right granted by contract. The renewal of a franchise, trademark, or trade name is treated as an acquisition of the franchise, trademark, or trade name.

(ii)

Notwithstanding the definitions provided in paragraph (b)(10)(i) of this section, any amount that is paid or incurred on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name and that is subject to section [1253\(d\)\(1\)](#) is not included in the basis of a section [197](#) intangible. (See paragraph (g)(6) of this section.)

(11) *Contracts for the use of, and term interests in, section 197 intangibles.*—

Section [197](#) intangibles include any right under a license, contract, or other arrangement providing for the use of property that would be a section [197](#) intangible under any provision of this paragraph (b) (including this paragraph (b)(11)) after giving effect to all of the exceptions provided in paragraph (c) of this section. Section [197](#) intangibles also include any term interest (whether outright or in trust) in such property.

(12) *Other similar items.*—

Section [197](#) intangibles include any other intangible property that is similar in all material respects to the property specifically described in section [197\(d\)\(1\)\(C\)\(i\)](#) through (v) and paragraphs (b)(3) through (7) of this section. (See paragraph (g)(5) of this section for special rules regarding certain reinsurance transactions.)

(c) *Section 197 intangibles; exceptions.*—

The term *section 197 intangible* does not include property described in section [197\(e\)](#). The following rules and definitions provide guidance concerning property to which the exceptions apply:

(1) *Interests in a corporation, partnership, trust, or estate.*—

Section [197](#) intangibles do not include an interest in a corporation, partnership, trust, or estate. Thus, for example, amortization under section [197](#) is not available for the cost of acquiring stock, partnership interests, or interests in a trust or estate, whether or not the interests are regularly traded on an established market. (See paragraph (g)(3) of this section for special rules applicable to property of a partnership when a section [754](#) election is in effect for the partnership.)

(2)Interests under certain financial contracts.—

Section [197](#) intangibles do not include an interest under an existing futures contract, foreign currency contract, notional principal contract, interest rate swap, or other similar financial contract, whether or not the interest is regularly traded on an established market. However, this exception does not apply to an interest under a mortgage servicing contract, credit card servicing contract, or other contract to service another person's indebtedness, or an interest under an assumption reinsurance contract. (See paragraph (g)(5) of this section for the treatment of assumption reinsurance contracts. See paragraph (c)(11) of this section and § [1.167\(a\)-14\(d\)](#) for the treatment of mortgage servicing rights.)

(3)Interests in land.—

Section [197](#) intangibles do not include any interest in land. For this purpose, an interest in land includes a fee interest, life estate, remainder, easement, mineral right, timber right, grazing right, riparian right, air right, zoning variance, and any other similar right, such as a farm allotment, quota for farm commodities, or crop acreage base. An interest in land does not include an airport landing or takeoff right, a regulated airline route, or a franchise to provide cable television service. The cost of acquiring a license, permit, or other land improvement right, such as a building construction or use permit, is taken into account in the same manner as the underlying improvement.

(4)Certain computer software

(i)Publicly available.—

Section [197](#) intangibles do not include any interest in computer software that is (or has been) readily available to the general public on similar terms, is subject to a nonexclusive license, and has not been substantially modified. Computer software will be treated as readily available to the general public if the software may be obtained on substantially the same terms by a significant number of persons that would reasonably be expected to use the software. This requirement can be met even though the software is not available through a system of retail distribution. Computer software will not be considered to have been substantially modified if the cost of all modifications to the version of the software that is readily available to the general public does not exceed the greater of 25 percent of the price at which the unmodified version of the software is readily available to the general public or \$2,000. For the purpose of determining whether computer software has been substantially modified—

(A)

Integrated programs acquired in a package from a single source are treated as a single computer program; and

(B)

Any cost incurred to install the computer software on a system is not treated as a cost of the software. However, the costs for customization, such as tailoring to a user's specifications (other than embedded programming options) are costs of modifying the software.

(ii)Not acquired as part of trade or business.—

Section [197](#) intangibles do not include an interest in computer software that is not acquired as part of a purchase of a trade or business.

(iii) Other exceptions.—

For other exceptions applicable to computer software, see paragraph (a)(3) of this section (relating to otherwise deductible amounts) and paragraph (g)(7) of this section (relating to amounts properly taken into account in determining the cost of property that is not a section [197](#) intangible).

(iv) Computer software defined.—

For purposes of this section, computer software is any program or routine (that is, any sequence of machine-readable code) that is designed to cause a computer to perform a desired function or set of functions, and the documentation required to describe and maintain that program or routine. It includes all forms and media in which the software is contained, whether written, magnetic, or otherwise. Computer programs of all classes, for example, operating systems, executive systems, monitors, compilers and translators, assembly routines, and utility programs as well as application programs, are included. Computer software also includes any incidental and ancillary rights that are necessary to effect the acquisition of the title to, the ownership of, or the right to use the computer software, and that are used only in connection with that specific computer software. Such incidental and ancillary rights are not included in the definition of trademark or trade name under paragraph (b)(10)(i) of this section. For example, a trademark or trade name that is ancillary to the ownership or use of a specific computer software program in the taxpayer's trade or business and is not acquired for the purpose of marketing the computer software is included in the definition of computer software and is not included in the definition of trademark or trade name. Computer software does not include any data or information base described in paragraph (b)(4) of this section unless the data base or item is in the public domain and is incidental to a computer program. For this purpose, a copyrighted or proprietary data or information base is treated as in the public domain if its availability through the computer program does not contribute significantly to the cost of the program. For example, if a word-processing program includes a dictionary feature used to spell-check a document or any portion thereof, the entire program (including the dictionary feature) is computer software regardless of the form in which the feature is maintained or stored.

(5) Certain interests in films, sound recordings, video tapes, books, or other similar property.—

Section [197](#) intangibles do not include any interest (including an interest as a licensee) in a film, sound recording, video tape, book, or other similar property (such as the right to broadcast or transmit a live event) if the interest is not acquired as part of a purchase of a trade or business. A film, sound recording, video tape, book, or other similar property includes any incidental and ancillary rights (such as a trademark or trade name) that are necessary to effect the acquisition of title to, the ownership of, or the right to use the property and are used only in connection with that property. Such incidental and ancillary rights are not included in the definition of trademark or trade name under paragraph (b)(10)(i) of this section. For purposes of this paragraph (c)(5), computer software (as defined in paragraph (c)(4)(iv) of this section) is not treated as other property similar to a film, sound recording, video tape, or book. (See section [167](#) for amortization of excluded intangible property or interests.)

(6) Certain rights to receive tangible property or services.—

Section [197](#) intangibles do not include any right to receive tangible property or services under a contract or from a governmental unit if the right is not acquired as part of a purchase of a trade or business. Any right that is described in the preceding sentence is not treated as a section [197](#) intangible even though the right is also described in section [197\(d\)\(1\)\(D\)](#) and paragraph (b)(8) of this section (relating to certain governmental licenses, permits, and other rights) and even though the right fails to meet one or more of the requirements of paragraph (c)(13) of this section (relating to certain rights of fixed duration or amount). (See § [1.167\(a\)-14\(c\)\(1\)](#) and (3) for applicable rules.)

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(7) Certain interests in patents or copyrights.—

Section [197](#) intangibles do not include any interest (including an interest as a licensee) in a patent, patent application, or copyright that is not acquired as part of a purchase of a trade or business. A patent or copyright includes any incidental and ancillary rights (such as a trademark or trade name) that are necessary to effect the acquisition of title to, the ownership of, or the right to use the property and are used only in connection with that property. Such incidental and ancillary rights are not included in the definition of trademark or trade name under paragraph (b)(10)(i) of this section. (See § [1.167\(a\)-14\(c\)\(4\)](#) for applicable rules.)

(8) Interests under leases of tangible property**(i) Interest as a lessor.—**

Section [197](#) intangibles do not include any interest as a lessor under an existing lease or sublease of tangible real or personal property. In addition, the cost of acquiring an interest as a lessor in connection with the acquisition of tangible property is taken into account as part of the cost of the tangible property. For example, if a taxpayer acquires a shopping center that is leased to tenants operating retail stores, any portion of the purchase price attributable to favorable lease terms is taken into account as part of the basis of the shopping center and in determining the depreciation deduction allowed with respect to the shopping center. (See section 167(c)(2).)

(ii) Interest as a lessee.—

Section [197](#) intangibles do not include any interest as a lessee under an existing lease of tangible real or personal property. For this purpose, an airline lease of an airport passenger or cargo gate is a lease of tangible property. The cost of acquiring such an interest is taken into account under section 178 and § [1.162-11\(a\)](#). If an interest as a lessee under a lease of tangible property is acquired in a transaction with any other intangible property, a portion of the total purchase price may be allocable to the interest as a lessee based on all of the relevant facts and circumstances.

(9) Interests under indebtedness**(i) In general.—**

Section [197](#) intangibles do not include any interest (whether as a creditor or debtor) under an indebtedness in existence when the interest was acquired. Thus, for example, the value attributable to the assumption of an indebtedness with a below-market interest rate is not amortizable under section [197](#). In addition, the premium paid for acquiring a debt instrument with an above-market interest rate is not amortizable under section 197. See section [171](#) for rules concerning the treatment of amortizable bond premium.

(ii) Exceptions.—

For purposes of this paragraph (c)(9), an interest under an existing indebtedness does not include the deposit base (and other similar items) of a financial institution. An interest under an existing indebtedness includes mortgage servicing rights, however, to the extent the rights are stripped coupons under section [1286](#).

(10) Professional sports franchises.—

Section [197](#) intangibles do not include any franchise to engage in professional baseball, basketball, football, or any other professional sport, and any item (even though otherwise qualifying as a section [197](#) intangible) acquired in connection with such a franchise.

(11) Mortgage servicing rights.—

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Section [197](#) intangibles do not include any right described in section 197(e)(7) (concerning rights to service indebtedness secured by residential real property that are not acquired as part of a purchase of a trade or business). (See § [1.167\(a\)-14\(d\)](#) for applicable rules.)

(12)*Certain transaction costs.*—

Section [197](#) intangibles do not include any fees for professional services and any transaction costs incurred by parties to a transaction in which all or any portion of the gain or loss is not recognized under part III of subchapter C of the Internal Revenue Code.

(13)*Rights of fixed duration or amount*

(i)

Section [197](#) intangibles do not include any right under a contract or any license, permit, or other right granted by a governmental unit if the right—

(A)

Is acquired in the ordinary course of a trade or business (or an activity described in section 212) and not as part of a purchase of a trade or business;

(B)

Is not described in section [197\(d\)\(1\)\(A\)](#), (B), (E), or (F);

(C)

Is not a customer-based intangible, a customer-related information base, or any other similar item; and

(D)

Either—

(1)

Has a fixed duration of less than 15 years; or

(2)

Is fixed as to amount and the adjusted basis thereof is properly recoverable (without regard to this section) under a method similar to the unit-of-production method.

(ii)

See § [1.167\(a\)-14\(c\)\(2\)](#) and (3) for applicable rules.

(d)*Amortizable section 197 intangibles*

(1)*Definition.*—

Except as otherwise provided in this paragraph (d), the term *amortizable section 197 intangible* means any section [197](#) intangible acquired after August 10, 1993 (or after July 25, 1991, if a valid retroactive election under § [1.197-](#)

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[1T](#) has been made), and held in connection with the conduct of a trade or business or an activity described in section [212](#).

(2)Exception for self-created intangibles

(i)In general.—

Except as provided in paragraph (d)(2)(iii) of this section, amortizable section 197 intangibles do not include any section [197](#) intangible created by the taxpayer (a self-created intangible).

(ii)Created by the taxpayer

(A)Defined.—

A section 197 intangible is created by the taxpayer to the extent the taxpayer makes payments or otherwise incurs costs for its creation, production, development, or improvement, whether the actual work is performed by the taxpayer or by another person under a contract with the taxpayer entered into before the contracted creation, production, development, or improvement occurs. For example, a technological process developed specifically for a taxpayer under an arrangement with another person pursuant to which the taxpayer retains all rights to the process is created by the taxpayer.

(B)Contracts for the use of intangibles.—

A section [197](#) intangible is not a self-created intangible to the extent that it results from the entry into (or renewal of) a contract for the use of an existing section [197](#) intangible. Thus, for example, the exception for self-created intangibles does not apply to capitalized costs, such as legal and other professional fees, incurred by a licensee in connection with the entry into (or renewal of) a contract for the use of know-how or similar property.

(C)Improvements and modifications.—

If an existing section [197](#) intangible is improved or otherwise modified by the taxpayer or by another person under a contract with the taxpayer, the existing intangible and the capitalized costs (if any) of the improvements or other modifications are each treated as a separate section [197](#) intangible for purposes of this paragraph (d).

(iii)Exceptions

(A)

The exception for self-created intangibles does not apply to any section [197](#) intangible described in section [197\(d\)](#) ~~(1)(D)~~ (relating to licenses, permits or other rights granted by a governmental unit), 197(d)(1)(E) (relating to covenants not to compete), or 197(d)(1)(F) (relating to franchises, trademarks, and trade names). Thus, for example, capitalized costs incurred in the development, registration, or defense of a trademark or trade name do not qualify for the exception and are amortized over 15 years under section [197](#).

(B)

The exception for self-created intangibles does not apply to any section [197](#) intangible created in connection with the purchase of a trade or business (as defined in paragraph (e) of this section).

(C)

If a taxpayer disposes of a self-created intangible and subsequently reacquires the intangible in an acquisition described in paragraph (h)(5)(ii) of this section, the exception for self-created intangibles does not apply to the

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reacquired intangible.

(3)Exception for property subject to anti-churning rules.—

Amortizable section [197](#) intangibles do not include any property to which the anti-churning rules of section 197(f)(9) and paragraph (h) of this section apply.

(e)Purchase of a trade or business.—

Several of the exceptions in section [197](#) apply only to property that is not acquired in (or created in connection with) a transaction or series of related transactions involving the acquisition of assets constituting a trade or business or a substantial portion thereof. Property acquired in (or created in connection with) such a transaction or series of related transactions is referred to in this section as property acquired as part of (or created in connection with) a purchase of a trade or business. For purposes of section 197 and this section, the applicability of the limitation is determined under the following rules:

(1)Goodwill or going concern value.—

An asset or group of assets constitutes a trade or business or a substantial portion thereof if their use would constitute a trade or business under section [1060](#) (that is, if goodwill or going concern value could under any circumstances attach to the assets). See § [1.1060-1\(b\)\(2\)](#). For this purpose, all the facts and circumstances, including any employee relationships that continue (or covenants not to compete that are entered into) as part of the transfer of the assets, are taken into account in determining whether goodwill or going concern value could attach to the assets.

(2)Franchise, trademark, or trade name

(i)In general.—

The acquisition of a franchise, trademark, or trade name constitutes the acquisition of a trade or business or a substantial portion thereof.

(ii)Exceptions.—

For purposes of this paragraph (e)(2)—

(A)

A trademark or trade name is disregarded if it is included in computer software under paragraph (c)(4) of this section or in an interest in a film, sound recording, video tape, book, or other similar property under paragraph (c)(5) of this section;

(B)

A franchise, trademark, or trade name is disregarded if its value is nominal or the taxpayer irrevocably disposes of it immediately after its acquisition; and

(C)

The acquisition of a right or interest in a trademark or trade name is disregarded if the grant of the right or interest is not, under the principles of section [1253](#), a transfer of all substantial rights to such property or of an undivided interest in all substantial rights to such property.

(3) Acquisitions to be included.—

The assets acquired in a transaction (or series of related transactions) include only assets (including a beneficial or other indirect interest in assets where the interest is of a type described in paragraph (c)(1) of this section) acquired by the taxpayer and persons related to the taxpayer from another person and persons related to that other person. For purposes of this paragraph (e)(3), persons are related only if their relationship is described in section 267(b) or 707(b) or they are engaged in trades or businesses under common control within the meaning of section [41\(f\)\(1\)](#).

(4) Substantial portion.—

The determination of whether acquired assets constitute a substantial portion of a trade or business is to be based on all of the facts and circumstances, including the nature and the amount of the assets acquired as well as the nature and amount of the assets retained by the transferor. The value of the assets acquired relative to the value of the assets retained by the transferor is not determinative of whether the acquired assets constitute a substantial portion of a trade or business.

(5) Deemed asset purchases under section 338.—

A qualified stock purchase that is treated as a purchase of assets under section [338](#) is treated as a transaction involving the acquisition of assets constituting a trade or business only if the direct acquisition of the assets of the corporation would have been treated as the acquisition of assets constituting a trade or business or a substantial portion thereof.

(6) Mortgage servicing rights.—

Mortgage servicing rights acquired in a transaction or series of related transactions are disregarded in determining for purposes of paragraph (c)(11) of this section whether the assets acquired in the transaction or transactions constitute a trade or business or substantial portion thereof.

(7) Computer software acquired for internal use.—

Computer software acquired in a transaction or series of related transactions solely for internal use in an existing trade or business is disregarded in determining for purposes of paragraph (c)(4) of this section whether the assets acquired in the transaction or series of related transactions constitute a trade or business or substantial portion thereof.

(f) Computation of amortization deduction*(1) In general.—*

Except as provided in paragraph (f)(2) of this section, the amortization deduction allowable under section [197\(a\)](#) is computed as follows:

(i)

The basis of an amortizable section [197](#) intangible is amortized ratably over the 15-year period beginning on the later of—

(A)

The first day of the month in which the property is acquired; or

(B)

In the case of property held in connection with the conduct of a trade or business or in an activity described in section [212](#), the first day of the month in which the conduct of the trade or business or the activity begins.

(ii)

Except as otherwise provided in this section, basis is determined under section 1011 and salvage value is disregarded.

(iii)

Property is not eligible for amortization in the month of disposition.

(iv)

The amortization deduction for a short taxable year is based on the number of months in the short taxable year.

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