

FOOTNOTES

- ¹ I.R.C. § 453. See generally 6 Harl, Agricultural Law § 48.03 (1992).
- ² E.g., *Trivett v. Comm'r*, 611 F.2d 655 (6th Cir. 1979), *aff'g*, 36 T.C.M. 675; *Pozzi v. Comm'r*, 49 T.C. 119 (1967).
- ³ See, e.g., *Reed v. Comm'r*, 83-2 U.S.T.C. ¶ 9728 (1st Cir. 1983), *rev'g*, T.C. Memo. 1982-734 (escrow arrangement entered into prior to existence of seller's unrestricted right to sale proceeds).
- ⁴ See Rev. Rul. 77-294, 1977-2 C.B. 173 (escrow had to impose substantial restriction serving bona fide purpose of purchaser to be upheld).
- ⁵ *Harris v. Comm'r*, 477 F.2d 812 (4th Cir. 1973).
- ⁶ I.R.C. § 453(e)(1), (3). See *Tecumseh Corrugated Box Co. v. Comm'r*, 94 T.C. 360 (1990), *aff'd*, 932 F.2d 526 (6th Cir. 1991) (transfer of property to trust which later assigned property to partnership formed by same parties followed by sale to U.S. Government; transaction represented second disposition by related party).
- ⁷ I.R.C. § 453(e)(4).
- ⁸ I.R.C. § 453(e)(2)(A).
- ⁹ I.R.C. § 453(e)(6)(B). See Ltr. Rul. 8848054, Sept. 7, 1988 (substitution of new property as security for installment obligation secured by property sold under threat of condemnation not disposition of installment obligation).
- ¹⁰ I.R.C. § 453(e)(6)(C).
- ¹¹ I.R.C. § 453(e)(7).
- ¹² I.R.C. § 453(e)(6)(A).
- ¹³ I.R.C. §§ 453(f)(1), 267(b),(c)(4).
- ¹⁴ I.R.C. § 453(f)(1).
- ¹⁵ *Id.* See Ltr. Rul. 8829002, March 18, 1988 (partner owning 40 percent of partnership which received in liquidation of corporation installment obligation for property purchased by partners from corporation was not related to partner's father who was 60 percent partner; transfer of installment obligation owned by 40 percent shareholder to partnership in liquidation of corporation not disposition of installment obligation causing recognition of all gain where shareholder became 40 percent partner in acquiring partnership and transfer not shown or made for principal purpose of avoiding income tax).
- ¹⁶ I.R.C. §§ 453(g), 1239.
- ¹⁷ See notes 9-12 *supra* and accompanying text.

GENERAL ASSET ACCOUNT DEPRECIATION

The IRS has issued proposed regulations which simplify the computation of depreciation by allowing taxpayers to group assets in one or more general asset accounts with the assets in any particular asset account depreciated as a single asset. The regulations apply to assets placed in service in taxable years ending on or after the date of publication of the final regulation. For prior taxable years, the IRS indicated that it will allow use of any reasonable method that clearly reflects income and is consistently applied to the general asset accounts.

A general asset account includes assets with the same asset class, depreciation method, recovery period and convention which are placed in service in the same taxable year. An asset may not be placed in a general asset account if (1) a credit is claimed under I.R.C. § 47 or § 48, (2) the asset is used in a passive activity, or (3) the asset is used predominantly outside the United States or involves foreign sourced income.

The amount realized upon the disposition of an asset in a general asset account is recognized as ordinary income limited to the unadjusted depreciable basis of the account (disregarding any election under I.R.C. §§ 179, 190) less any amounts previously recognized as ordinary income at the time of disposition. The disposition of an asset does not

affect the depreciation claimed on the general asset account. Typically, the entire disposition price is reportable as ordinary income.

A special rule is provided that gain or loss from the disposition of all of the assets or the last asset from the general asset account is determined with reference to the adjusted depreciable basis at termination (the remaining basis). A taxpayer may terminate general asset account treatment for a particular asset if the asset is disposed of as the result of a casualty, charitable contribution, the cessation of a business or in transactions to which nonrecognition provisions apply.

An anti-abuse rule specifies that if an asset in a general asset account is disposed of in a transaction one of the principal purposes of which is to avoid net operating loss limitations or the use of a credit, the disposition of the asset is treated as though a general asset election had never been made for the asset.

The election to apply the general asset account rules is to be made on a timely filed return, including extensions, for the tax year the assets are placed in service. The election is made by typing or printing "GENERAL ASSET ACCOUNT ELECTION MADE UNDER SECTION 168(i)(4)" on the top of Form 4562. **57 Fed. Reg. 39374 (Aug. 31, 1992), adding Prop. Treas. Reg. §§ 1.168(i)-1, 1.56(g)-1.**

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

LACHES. In 1978, the plaintiff landlord conveyed an irregular shaped partial of land to the defendant who farmed the surrounding land as a tenant of the plaintiff. In building a homestead on the property, the tenant made minor

encroachments of the plaintiff's land in building a pond, driveway and drainage pipe. When the plaintiff became aware of the encroachments, the plaintiff included in the 1982 lease a provision by which the tenant waived any right to the encroachments. The plaintiff then filed an action in 1987 to clear title to the encroachments in the plaintiff. The