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Internet Domain Names: Capitalization or Amortization?

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In a recently issued Chief Counsel Advice Memorandum (CCA 201543014), the IRS has concluded that costs incurred by a taxpayer to acquire internet domain names from a secondary market to use in their trade or business must be capitalized under § 263(a) as an intangible asset. However, when certain requirements are met, these costs may be amortized under § 197 over a 15-year period as a customer-based intangible asset.

Generally, an internet domain name is categorized as either a “non-generic” or a “generic” domain name. This distinction is important. If a non-generic domain name is registered as a trademark or functions as a trademark, the capitalized costs of acquiring the domain name can be amortized as a trademark asset under § 197(d)(1)(F). A trademark is any company or product name that is used to identify a particular good, service, and/or business and the name distinguishes the service or good from competitors. Well-known examples of trademarks are Coca-Cola, Apple, and Kodak.

In the circumstances where a non-generic domain name does not qualify as a trademark, the costs associated with acquiring the domain name can still be treated as a customer-based intangible under § 197 if the taxpayer uses the non-generic domain name in its trade or business to provide goods or services through a website that is already constructed and will be maintained by the acquiring taxpayer.

A generic domain name is not a company or product name; rather the domain name uses generic terms people associate with the service or good, such as “toothpaste.com” or “snowblowers.com.” Generic terms cannot be trademarked and thus do not qualify as a trademark asset under § 197. However, as with non-generic terms that do not qualify as a trademark, a generic term would qualify as a customer-based intangible asset under § 197 if the taxpayer uses the domain name in its trade or business to provide goods or services through a website that is already constructed and maintained by the acquiring taxpayer.

In summary, the cost of acquiring a non-generic internet domain name that qualifies as a trademark can be amortized over a 15-year period under § 197. Also, the cost of acquiring a generic or non-generic domain name can be amortized over a 15-year period under § 197 if it was used on an established website prior to acquisition and the taxpayer continues to use the domain name in their trade or business. The cost of acquiring a domain name that does not qualify as a trademark and has not been previously used on a website (no goods or services have been offered) would not qualify for amortization under § 197. Such costs would represent an intangible

asset that could only be amortized in cases where the taxpayer could show that the asset has a limited useful life.

Contact us if you have or are planning to acquire an internet domain name and have questions regarding the tax treatment of these actions. Visit the [Our Thoughts On tax blog](#) for more timely articles on tax topics.

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