

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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to: Associate Area Counsel (Miami)
(Large Business & International), CC:LB&I:RFPH:MIA

from: Branch Chief, Branch 7
Office of Associate Chief Counsel (Income Tax and Accounting), CC:ITA:7

subject: Request for guidance regarding the depreciation classification of a truck service station under section 168

This Chief Counsel Advice responds to your request for technical assistance dated September 28, 2010. This advice may not be used or cited as precedent.

LEGEND

Taxpayer =
Property =
State =
Date1 =
Date2 =
A =
B =
C =
D =
E =
F =
G =
H =
I =
J =
K =
L =
M =

N =
O =
P =
Q =

ISSUE

Whether the Property building is a service station building includable in Asset Class 57.1 of Rev. Proc. 87-56, 1987-2 C.B. 674, with a 15-year recovery period for purposes of section 168(a) of the Internal Revenue Code, or is it nonresidential real property with a 39-year recovery period for purposes of section 168(a).

CONCLUSION

The Property building is a service station building includable in Asset Class 57.1 of Rev. Proc. 87-56, with a 15-year recovery period for purposes of section 168(a).

FACTS

Taxpayer is a State corporation that operates in three segments: A, B, and C. The A portion of Taxpayer's business is focused on providing full-service leasing and contract maintenance programs whereby Taxpayer provides vehicle maintenance, supplies, fuel, and related equipment necessary for the operation of trucks.

In Date1, Taxpayer purchased Property located at D, for \$E, and placed the property in service during the taxable year ending Date2. Property consists of F acres of land, a G square foot special purpose industrial building structure, a fuel island located in the rear of the Property, a large paved lot with H parking spaces, and I billboards. Property was previously owned by a J.

The special purpose industrial building on Property is a single structure. Hereinafter, this building is referred to as "the Property building". As detailed below, this building contains office space, restrooms, a work room, a mechanical room, a truck service center, and a truck wash.

The front portion of the Property building contains approximately K square feet of office space and is L story. The office space is comprised of several executive offices, open office areas, restrooms, and a conference room. Because the Property building other than its front portion is more than L story, the front portion does not share a roof with the remainder portion of the Property building. The front portion of this building also is entirely separated from the remainder of the Property building by a firewall and was an addition to the remainder portion of the Property building.

Directly behind the firewall of the Property building are I stories of additional office space. The bottom floor is a work room used by the technicians, a mechanical room,

and a couple of small offices. The top floor consists of a conference room and a couple of other offices. The top and bottom floor each contain M square feet of floor space.

The remaining portion of the Property building is a truck service center of approximately N square feet. This portion of the Property building consists of Q service bays with overhead doors and has a drive through layout so the trucks can physically park inside the service center. In the service bays (except for the truck wash), Taxpayer provides maintenance services such as front-end alignments, oil changes, mechanical work, and other truck repair services. One of the Q service bays is a drive-through truck wash, which is located at the back of the Property building and is separated by a floor-to-ceiling firewall. This drive-through truck wash may have been constructed some time after the service center portion of the building was built.

During the taxable year ending Date2, Taxpayer sold P gallons of fuel and Q quarts of oil, along with lube and other petroleum products as part of its maintenance and repair business, at the truck service center in the Property building. The fuel is sold to Taxpayer's leased vehicles and also to other truck owners to whom Taxpayer markets both maintenance and fuel services. The customers of Taxpayer's fuel sales include Taxpayer's truck lessees, owners of private truck fleets to whom Taxpayer provides maintenance services, and private fleets who are otherwise customers of Taxpayer.

LAW AND ANALYSIS

Section 167(a) provides that there shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence) of property used in a taxpayer's trade or business.

The depreciation deduction provided by section 167(a) for tangible property placed in service after 1986 generally is determined under section 168. This section prescribes two methods of accounting for determining depreciation allowances. One method is the general depreciation system in section 168(a) and the other method is the alternative depreciation system in section 168(g). Under either depreciation system, the depreciation deduction is computed by using a prescribed depreciation method, recovery period, and convention.

For purposes of the general depreciation system, the depreciation method and recovery period are determined by the property's classification under section 168(e). Pursuant to section 168(e)(1), property with a class life of more than 20 years or more but less than 25 years is classified as 15-year property.

For purposes of either section 168(a) or 168(g), the applicable recovery period is determined by reference to class life or by statute. Section 168(i)(1) defines the term "class life" as meaning the class life (if any) that would be applicable with respect to any property as of January 1, 1986, under section 167(m) (determined without regard to section 167(m)(4) and as if the taxpayer had made an election under section 167(m)) as

in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990. Former section 167(m) provided that in the case of a taxpayer who elected the Class Life Asset Depreciation Range ("ADR") system of depreciation, the depreciation allowance was based on the class life prescribed by the Secretary that reasonably reflected the anticipated useful life of that class of property to the industry or other group.

Section 1.167(a)-11(b)(4)(iii)(b) of the Income Tax Regulations provides rules for classifying property under former section 167(m). Property is included in the asset class for the activity in which the property is primarily used. Property is classified according to primary use even though the activity in which the property is primarily used is insubstantial in relation to all the taxpayer's activities.

Rev. Proc. 87-56 sets forth the class lives of property that are necessary to compute the depreciation allowance under section 168. This revenue procedure establishes two broad categories of depreciable assets: (1) asset classes 00.11 through 00.4 that consist of specific depreciable assets used in all business activities; and (2) asset classes 01.1 through 80.0 that consist of depreciable assets used in specific business activities. An asset that falls within both an asset group (that is, asset classes 00.11 through 00.4) and an activity group (that is, asset classes 01.1 through 80.0) would be classified in the asset group. See *Norwest Corp. & Subs. v. Commissioner*, 111 T.C. 105, 156-64 (1998).

Pursuant to Rev. Proc. 87-56, asset class 57.1, Distributive Trades and Services—Billboard, Service Station Buildings and Petroleum Marketing Land Improvements, includes section 1250 assets, including service station buildings and depreciable land improvements, whether 1245 property or section 1250 property, used in the marketing of petroleum and petroleum products, but not including any of these facilities related to petroleum and natural gas trunk pipelines. Asset class 57.1 includes car wash buildings and related land improvements, includes billboards, whether such assets are section 1245 property or section 1250 property. Asset class 57.1 excludes all other land improvements, buildings and structural components as defined in section 1.48-1(e). Assets in this class have a class life of 20 years and have a recovery period of 15 years for purposes of section 168(a).

Section 168(e)(2)(B) provides that the term "nonresidential real property" means section 1250 property which is not (i) residential rental property, or (ii) property with a class life of less than 27.5 years. Pursuant to section 168(c), the recovery period under the general depreciation system of section 168(a) for nonresidential real property is 39 years.

At issue is whether Taxpayer used the Property building primarily as a service station building during the taxable year ending Date2, which is the placed-in-service year of the Property building. The truck service center portion of the Property building possesses the features typically associated with a service station building in that the truck service

center includes service bays in which Taxpayer provides maintenance services for trucks, such as, front-end alignments, oil changes, mechanical work, and other truck repair services. In addition, there is a fuel island located in the rear of the Property. Also, in the taxable year ending Date2, Taxpayer sold P gallons of fuel and Q quarts of oil, along with lube and other petroleum products as part of its maintenance and repair business, at the truck service center in the Property building. The truck service center (including the service bay for the drive-through truck wash) comprises approximately 84 percent of the floor space of the Property building (N square feet divided by G square feet). Consequently, we conclude that Taxpayer used the Property building primarily as a service station building during the taxable year ending Date2. Accordingly, the entire Property building (including the front portion and other office space) is classified in asset class 57.1 of Rev. Proc. 87-56 and has a 15-year recovery period for purposes of section 168(a).

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Douglas Kim at (202)622-4930 if you have any further questions.