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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR DISTRICT COUNSEL, ROCKY MOUNTAIN DISTRICT
CC:WR:RMD:DEN
Attn: Sara Barkley

FROM: Assistant Chief Counsel (Field Service)
CC:DOM:FS

SUBJECT: Depreciation Issue

This Field Service Advice responds to your memorandum dated November 16, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND

X =
N =
Y =
A =
Yr1 =

ISSUES

1. Can a portion of purchase costs of a ski resort, which are allocated to the construction costs of the resort's mountain roads, trails and slopes, be depreciated?

2. If such costs can be depreciated, what is the correct recovery period?

3. Can costs incurred subsequent to the purchase, attributable to maintenance of such mountain roads, trails and slopes, be depreciated?

CONCLUSIONS

1. The costs incurred for clearing land and grading mountain roads, trails and slopes may not be depreciated; but, the costs incurred for surfacing roads and trails may be depreciated. This conclusion is qualified upon further factual development.

2. The correct recovery period for surfacing such roads and trails depends on when such costs were incurred. If the costs in question were made after 1980 and before 1987, they were depreciable over 5 years. If the costs in question were made after 1986, they are depreciable over 15 years.

3. If such costs are attributable to maintenance of previously constructed mountain roads, trails and slopes, they may either be depreciated or expensed.

FACTS

X purchased N ski resorts in Yr1 for $Y. X does not own the lands on which these resorts are located; the federal government owns them. X has the right to operate the resorts upon these lands pursuant to certain Special Use Permits, some of which allow such use by X for a set period of time (Term Special Use Permits), others of which are terminable at will by the federal government (Special Use Permits).

On its income tax returns since the purchase, X has claimed depreciation deductions which it attributes to the portion of its purchase price that was allocable to the construction of “mountain slopes and trails” at the ski resorts. As we understand it, X originally calculated the recovery period for such costs by equating it to the period of time remaining on its Term Special Use Permits. However, X is now arguing that the correct recovery period is 15 years, based upon its interpretation of the asset class 00.3 provision in Rev. Proc. 83-35, 1983-1 C.B. 745, and I.R.C. § 168 (e)(1).

In the course of its audit, which is still underway, X has not only defended its right to depreciate these costs, but has also raised the additional claim of entitlement to “all costs expended on mountain roads, slopes and trails since the acquisition” of the ski resorts. It is not clear from the incoming to what extent, if any, the additional term of “roads” expands X’s original claim. Indeed, the exact subject of the original term “mountain slopes and trails” is also unclear. It is also unclear whether the term “all costs” refers to costs of creating new mountain roads, slopes and trails, or the costs of maintaining the originals.

For the purpose of the following discussion, we shall assume that the term “slopes” refers to those mountainside areas of a ski resort that are originally cleared of trees, and kept clear of trees, down which people ski. Such slopes may or may not have been originally graded, and may or may not have been cleared of boulders. The term “trails” may be synonymous with slopes, buy may also refer to unpaved

paths which may be used by skiers, but also by resort personnel in the course of their work. Finally, the term “roads” we understand to mean trails that have been paved or graveled, that serve the resort’s vehicular traffic and also serve as an area for skiing.

LAW AND ANALYSIS

ISSUE 1. Can a portion of purchase costs of a ski resort, which are allocated to the construction costs of the resort’s mountain roads, trails and slopes, be depreciated?

Section 167 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 the trade or business of the taxpayer. Treas. Reg. § 1.167(a)-2 provides, in pertinent part, that the depreciation allowance does not apply to land apart from the improvements of physical development added to it. Section 168(a) provides that, except as otherwise provided in this section, the depreciation deduction provided by section 167(a) for any tangible property shall be determined by using the applicable depreciation method, recovery period, and convention.

In this case, X makes improvements to mountain roads and trails and slopes, property which may be considered property related to the ski slopes. Prior to section 168, the depreciable life of ski slopes and related property was determined under the facts and circumstances related to the individual item. See Rev. Rul. 71-362, 1971-2 C.B. 129. Under section 168, the determination of the depreciable life of tangible property is not determined by the facts and circumstances related to the property. In determining whether certain costs related to land improvements should be added to the basis of an asset for purposes of depreciation, the courts generally consider whether land preparation costs are “inextricably associated” with the land. If the costs are “inextricably associated” with the land, the costs are nondepreciable, whereas, if the costs are directly related to and a necessary part of the construction of depreciable buildings, the costs are depreciable. See Shainberg v. Commissioner, 33 T.C. 241, acq., 1960-1 C.B. 5; Algernon Blair, Inc. v. United States, 29 T.C. 1205 (1958), acq.,1958-2 C.B. 4. We will discuss a few cases and revenue rulings in this area which have similar factual situations and, accordingly, provide some guidance on this issue.

In Eastwood Mall Inc. v. United States, No. 4:92CV1089,1995 U.S. Dist. LEXIS 5242 (N.D. Ohio Apr. 14, 1995), the court held that costs for clearing, blasting, filling, and grading necessary to reshape and level a parcel of mountainous land into a flat earthen plateau were permanent land improvements inextricably associated with the land and, therefore, were nondepreciable land costs rather than depreciable costs of constructing the shopping mall building that was built on top of the plateau. The court reached this conclusion after determining that such costs

will not be reincurred if the mall building is rebuilt or replaced with another building. Instead, the earthen plateau would last indefinitely and was not subject to exhaustion, wear, or obsolesence.

In Wolfsen Land & Cattle Co. v. Commissioner, 72 T.C. 1 (1979), the court concluded that the taxpayer failed to prove that earthen components of the taxpayer's irrigation system had a definite life and, hence, the court held that the costs to construct the earthen components were nondepreciable. The court found that the irrigation system was a vital, integral part of the economic value of the ranch. Although there was evidence that the system was subject to wear and tear, the court concluded that it did not follow that the system was going to expire at some predictable time.

In Eastwood and Wolfsen, the courts considered whether the costs were inextricably associated with the land or directly related to and a necessary part of the construction of depreciable property. In making this determination, the courts also consider whether certain property would be depreciable if the improvements related to the property would be abandoned or retired within a determinable useful life. If so, in some cases, the property is deemed to have the same useful life as the improvements. For example, in Rudolph Investment Corp. v. Commissioner, T.C. Memo. 1972-129, the court considered whether costs to construct roads and trails and costs to make improvements to those roads and trails were nondepreciable land improvements. The court held that roads and trails constructed on the Yolo Ranch and improvements to those roads and trails were depreciable.

In Rudolph, the court found the following facts to be relevant in reaching its conclusion. All of the roads and trails on the ranch lead either to or from the various improvements on the ranch. The improvements consisted of gates, culverts, drainage ditches and terraces. These improvements were determined to have a useful life of ten years. After considering these facts, the court concluded that the evidence showed that the expenses incurred for the road improvements are depreciable because they are expenditures related to an improvement or physical development added to the land. The court determined that the roads would be abandoned if the improvements were no longer needed and, consequently, the roads were deemed to have the same useful life as the improvements.

In Rudolph, most of the land on the Yolo Ranch was leased from the State, Bureau of Land Management and the Forest Service. The federal and state grazing leases and permits at issue were limited on their faces to definite terms without expressed absolute right of renewal for additional terms and could be revoked at any time if there was a misuse of the rights. However, these permits were customarily renewed and thus were determined to have indefinite durations. Further, the grounds for cancellation or revocation are wholly contingent and may never happen,

and some are wholly within the control of the holder of the permits. Based upon these facts, the court found that these permits were not limited as to time and were basically of indefinite duration. Therefore, the court's conclusion was based upon the fact that the roads would be abandoned when the improvements were abandoned and not upon the nature of the permits.

There are several revenue rulings in this area involving similar factual situations. In Rev. Rul. 88-99, 1988-2 C.B. 33, the Service considered what parts of logging truck roads have determinable useful lives to a taxpayer for depreciation purposes. In the ruling, the Service emphasized that the physical characteristics of a road are not determinative as to whether the roadbed is depreciable or amortizable.

In Situation 1 of the ruling, on land that it owns, the taxpayer constructed a logging truck road for use in its logging operations and general timber management activities. The road is expected to be properly maintained for use by the taxpayer for an indefinite period. It is not expected to be retired, replaced, or abandoned in relation to the retirement of the processing facilities, but will continue to be used to manage and harvest timber for processing at other facilities. Past experience with similar roads indicates that the surfacing will have to be replaced in seven years and the bridges and culverts will have to be replaced in 20 years. The roadbed, however, is not expected to need replacing.

In Situation 1, the Service concluded that the logging truck road is expected to be useful to the taxpayer for an indefinite period. The roadbed portion of the logging road is not expected to be replaced on a periodic basis or to be retired, replaced, or abandoned in relation to the retirement of the facilities in which logs cut from the timber are currently processed. Therefore, the roadbed does not have a useful life to the taxpayer that is determinable and, accordingly, the roadbed is nondepreciable. However, the surfacing is expected to need to be replaced in seven years, and the bridges and culverts, in 20 years. Therefore, the surfacing, bridges, and culverts have useful lives to the taxpayer that are determinable and, accordingly, they are depreciable.

In Situation 2 of the ruling, on land that it owns, the taxpayer constructed a logging truck road solely for harvesting a certain stand of timber. It is reasonable to expect that harvesting of the timber will take four years. Following the harvesting of the timber, the cutover land is expected to be reforested, and the road to be abandoned. In Situation 2, the Service concluded that the logging road has a determinable useful life to the taxpayer. The useful life of the road terminates on the completion of the timber harvesting and reforestation. The roadbed, as well as the surfacing, bridges, and culverts, are depreciable or amortizable.

In Rev. Rul. 88-99, the Service clarified its position in an earlier ruling, Rev. Rul. 68-281, 1968-1 C.B. 22. In the earlier ruling, the Service determined that the costs of

clearing, grubbing, and rough cut and fill (grading) of a permanent road are nondepreciable, while the costs of the depreciable portion of a permanent road (such as bridges, culverts, graveling, and paving) are normally recovered by the taxpayer through one of the methods of depreciation under section 167(b) and the total cost of constructing a temporary road is amortizable over the period that it is used.

Two other revenue rulings are relevant to this case. In Rev. Rul. 68-193, 1968-1 C.B. 79, the Service ruled that costs incurred for grading roadways are depreciable over the life of the buildings with which they are directly associated since the grading would be retired, abandoned, or replaced contemporaneously with such depreciable buildings. Finally, in Rev. Rul. 65-265, 1965-2 C.B. 52, the Service addressed whether costs incurred in connection with the construction of an industrial complex were subject to an allowance for deprecation. The Service ruled that costs attributable to general grading of the land are inextricably associated with the land and are not subject to depreciation allowance, but that costs attributable to excavating, grading and removing soil necessary for the construction of buildings and the paved roadways are not "inextricably associated with the land" itself but instead are part of the cost of those assets and should be included in the depreciable base for the buildings and roadways.

As the Code, regulations, caselaw and rulings suggest, in this case we must determine the costs incurred to clear land and grade mountain roads, trails, and slopes are inextricably associated with the land or are directly related to the physical improvements on the land and whether the roads or trails would be abandoned if the improvements are retired or abandoned. There are no cases or rulings with exactly the same facts as in this case. However, X's situation most closely parallels Situation 1 in Rev. Rul. 88-99. Like in Situation 1, the road's roadbed (ostensibly comprised to a large degree of grading costs) will not be retired, replaced, or abandoned in relation to the replacement/retirement of the facilities which the road serves. After the retirement, replacement or abandonment of the facilities which the road serves, the grading costs and clearing costs incurred in creation of the mountain roads, slopes and trails will continue to be used to service other facilities. Thus, we conclude these costs are nondepreciable. The surfacing (e.g., graveling) will need to be replaced after a certain period of time and, accordingly, the surfacing has a determinable useful life. Therefore, we conclude the costs directly related to the surfacing are depreciable.

X, of course, disagrees with our conclusion. X takes the position that all of the costs expended in connection with the creation of mountain roads, slopes and trails are fully depreciable. The following discussion addresses X's principal arguments in support of its position. First, X asserts that the costs incurred with creating mountain roads, slopes and trails are associated with the costs of constructing necessary assets of the ski resort. In other words, many facilities located on a ski

resort, including ski lodges, chair lifts, parking lots, restaurants, and snow grooming equipment, would not be constructed if there were no mountain roads, slopes and trails on the ski resort. Thus, the mountain roads, slopes and trails have a direct association with the construction of all of the depreciable assets of a ski resort. We disagree. As discussed above, we have concluded that the costs, other than any surfacing costs, appear to be inextricably associated with the land.

Second, X argues that the grading costs incurred with creating mountain roads, slopes and trails are fully depreciable because the mountain roads, slopes and trails would be retired, abandoned or replaced contemporaneously with the depreciable assets (i.e., the chair lifts) with which they are directly associate and, thus, all parts of the mountain roads, slopes and trails have determinable useful lives. X argues that Situation 2 in Rev. Rul. 88-99 supports its position on this point. X fails to note that in Rev. Rul. 88-99, Situation 2, the timber harvesting, for which the logging road was constructed to serve, had a determinable termination date. After all of the trees were cut down, the land would be reforested, and the logging road would be abandoned. In Rev. Rul. 88-99, Situation 1, the logging road was not expected to be abandoned in relation to the retirement of the processing facilities, but will continue to be used to manage and harvest timber processing at other facilities. Thus, the logging road is expected to be useful to the taxpayer for an indefinite period. X's situation much more closely parallels Situation 1 rather than Situation 2.

In X's case, we do not know when or if the facilities on the ski resort will be abandoned. Although the mountain roads and trais are directly associated with facilities which will need to be periodically replaced, retired or abandoned, X will inevitably replace some or all of these facilities with newer ones as long as X stays in existence. The same mountain roads and trails will continue to be used to service these other, newer facilities. X may stay in existence indefinitely because the permits held by X will allow X to use federal government land to operate its ski resort indefinitely. Thus, X cannot establish a determinable termination date for which to contemporaneously retire its mountain roads and trails.

In support of its abandonment argument, X asserts that the fact that it has to remove all structures and improvements added to the land in order to restore the land in the event that its permits are abandoned or revoked is evidence that these mountain roads, slopes and trails are not permanent land improvements. Specifically, X claims that the mountain roads, slopes and trails will be reclaimed to their original preexisting state when the federal government permits are abandoned or terminated. Although this may be true, since the federal government permits are of indefinite duration, X cannot establish a coterminous, determinable termination date for these assets.

The courts have primarily relied upon renewal provisions or actual renewals in ascertaining the determinable useful lives of permits, licenses, leases, and contracts for purposes of amortization. Generally, if it is reasonably probable that the licenses would be renewed indefinitely, then the licenses do not have determinable useful lives. Toledo TV Cable Co. v. Commissioner, 55 T.C. 1107, 1117 (1971).

The probability of future renewals is a question of fact. Id.; Westinghouse Broadcasting Co. v. Commissioner, 36 T.C. 912, 921 (1961), aff'd, 309 F.2d 279 (3rd Cir. 1962). The determination is to be made in accordance with the facts known or reasonably anticipated at the end of the period for which the return is filed. New England Tank Industries, Inc. v. Commissioner, 50 T.C. 771, 781 (1968), aff'd per curiam,413 F.2d 1038 (1st Cir. 1969); Pasadena City Lines, Inc. v. Commissioner, 23 T.C. 34, 39 (1954). The petitioners have the burden of proving the respondent's determination erroneous. They must show more than uncertainty as to the franchises' useful lives. Westinghouse, 36 T.C. at 921.

In Westinghouse, the taxpayer claimed it paid $5 million for the seven month remainder of a two-year network affiliation contract. The court concluded that the automatic renewal clause made the contract's useful life indeterminate and, therefore, the contract was not depreciable. Likewise, in Toledo TV Cable Co., the court concluded that the holders of Toledo TV Cable and Newport Cable franchises must have reasonably anticipated future renewals of those cable franchises in light of the purchase price they paid. One of the purchasers testified that in arriving at the purchase price, income projections were made extending beyond the period remaining on the Newport franchise. Also, the court gave significance to the fact that the franchise holders anticipated significant future capital costs associated with repairing the condition of the franchises at the time of purchasing the franchises. The franchise holders undoubtedly would not have invested this money without a reasonable expectation of future renewals. Thus, based primarily on this among other factors, the court held that the petitioner failed to prove that the franchises have determinable useful lives.

Most of the case law discussing the determinable useful life of licenses, permits, etc. is in the context of determining whether the licenses are subject to an amortization deduction. In this case, X is not seeking an amortization deduction for the value of the permit fees it paid. Rather, X sought (initially) to depreciate the allocated portion of the purchase cost attributable to the mountain roads, slopes and trails over the remaining stated lives of the Term Special Use Permits. We, however, will analyze the issue of whether the Special Use Permits held by X have determinable lives. A conclusion that the permits do not have determinable lives would lend support to the position that the mountain roads, slopes and trails do not have determinable lives.

Most of the federal land that taxpayer has been granted the right to use is covered by the Special Use Permits. As provided in the facts, the Special Use Permits have no stated duration, but are terminable at will by the federal government. Thus, these permits are ostensibly of indefinite duration until terminated by the federal government.

We do not know how reasonable the probability exists that the federal government will exercise its authority to terminate the Special Use Permits held by X to use approximately 9300 acres of federal government land. We are, however, aware of the fact that the annual 10-K Report for Yr1 for X indicates that there are no indications that the federal government has any present intent to terminate X's permits. In any event, it appears doubtful that the X can establish determinable useful lives for these permits since they have no stated terms.

A much less significant amount of the federal land that taxpayer has been granted the right to use is covered by Term Special Use Permits. These permits have a stated term of 30 years. They may be renewed by the federal government for additional terms provided that X complies with the then-existing laws and regulations governing the occupancy and use of National Forest lands. Hence, as long as X complies with these rules, these permits may be renewed indefinitely and, therefore, would have indeterminable useful lives. The facts provided indicate that these permits will be renewed unless the operator of the area gives cause for the revocation of the permit.

The income projections for X made available to potential purchasers of X back in Yr1 projected income and capital expenditures extending far beyond the time period remaining on the Special Use Permits. We are told that the purchaser of X could not have expected to break even on their investment within the time period remaining on the Special Use Permits. These facts indicate that taxpayer purchased X with the expectation of receiving future renewals of the Special Use Permits. Hence, these facts help establish our position that the Special Use Permits have indeterminable useful lives. Since X possesses permits of indefinite duration providing them with the right to use federal land to operate its ski resort, its follows that X itself will have an indefinite existence unless we are told otherwise.

Third, X argues that the Tax Court's holding in Rudolph supports X's position that the costs it incurred in connection with the construction of mountain roads and trails are fully depreciable. X's reliance on this case is misplaced. The Tax Court concluded that the improvements, such as the gates and cattle guards, to the roads were not related to the land and, therefore, are depreciable, and that the costs of grading the roads were depreciable because the roads would be abandoned if the improvements were no longer needed. In this case, improvements of the type in Rudolph do not appear to be at issue. Therefore, the case is factually

distinguishable from this case. Further, X has not shown that the mountain roads and trails, or slopes would be abandoned during a determinable useful life.

Finally, X argues that the Wolfsen decision is inapplicable to this case because the Wolfsen decision preceded the enactment of the 'Accelerated Cost Recovery System' (ACRS) and of the 'Modified Accelerated Cost Recovery System' (MACRS), which is codified in section 168. X states that the issuance of ACRS, MACRS and Rev. Rul. 88-99 greatly impacts and devalues Wolfsen's conclusions. We disagree. Section 168, entitled ACRS and MACRS, provides rules for the determination of the amount of depreciation deduction. Section 168 does not provide rules as to whether property is subject to a deprecation deduction. Instead, section 167 addresses this fundamental issue. Treas. Reg. § 1.167(a)-1(a),(b) provides, generally, that a depreciation deduction is allowed for property for over the period of time over which the asset may reasonably be expected to be useful to the taxpayer in his trade or business or in the production of his income.

In Wolfsen, the court held that the petitioner failed to prove that the property at issue, an irrigation system, had a definite life viewed from the perspective of the date of purchase. Since the property had an indefinite useful life, the court concluded that it was not the type of property subject to a depreciation deduction under section 167. Hence, Wolfsen, like this case, addresses the fundamental issue of whether property is subject to a depreciation deduction under section 167. Wolfsen does not address the methodology for depreciating the subject property because the subject property is nondepreciable. Hence, the enactment and issuance of ACRS and MACRS does not lessen the relevance of the Wolfsen case to this case.

The facts in this case parallel the facts in Situation 1 of Rev. Rul. 88-99. We conclude that the costs incurred for clearing land and grading mountain roads, trails, and slopes are associated with property that has an indefinite useful life and, accordingly, these costs may not be depreciated. However, the costs incurred for surfacing the roads may be depreciated.

ISSUE 2. If such costs can be depreciated, what is the correct recovery period?

The 'Accelerated Cost Recovery System' (ACRS), which was codified in section 168, provides rules for determination of depreciation for property placed in service after December 31, 1980. ACRS was revised by the Tax Reform Act of 1986, creating the Modified Accelerated Cost Recovery System (MACRS), which is generally effective for tangible property placed in service after 1986.

For purposes of section 168, the recovery period of depreciable personal property generally is based on the property's class life. Class life is defined within subsection 168(i)(1) as " . . . the class life (if any) which would be applicable with

respect to any property as of January 1, 1986, under subsection (m) of section 167. The reference to section 167(m) shall be treated as reference to such subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation of 1990."

Former section 167(m) provided that in the case of a taxpayer who elected the 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. Rev. Proc. 83-35 is the prescription of class lives by the Secretary for ACRS property (property placed in service after 1980 and before 1987). For purposes of defining the classes of recovery property under ACRS, former section 168(c)(2) makes reference to the present class life for the property. The present class life is the asset guideline period (midpoint class life) established for the class as of December 31, 1980, except for asset guideline class 48.12.

Here, the depreciable portion of the subject tangible assets (e.g. road surfacing costs) which were acquired by X in Year 1 fall within asset guideline class 00.3, Land Improvements, which provides for a class life of 20 years. Former section 168(c)(2)(B) provides that property which is section 1245 class property and which is not 3-year property, 10-year property, or 15-year public utility property is 5- year property. Property with a class life of 20 years is not 3-year property, 10-year property, or 15-year public utility. Therefore, the subject property is 5-year property which X can recover over 5 years.

Rev. Proc. 87-56, 1987-2 C.B. 674, is the prescription of class lives by the Secretary for MACRS property (property placed in service after 1986). Under this, the depreciable amount of the subject property fall within asset class 00.3, Land Improvements, which provides for a class life of 20 years. Section 168(e) provides that property with a class life (in years) of 20 or more but less than 25 shall be treated as 15-year property. Section 168(c) provides that the applicable recovery period for 15-year property is 15 years.

ISSUE 3. Can costs incurred subsequent to the purchase, attributable to maintenance of such mountain roads, trails and slopes, be depreciated?

Any additional clearing, grading, hillside grooming, and road resurfacing costs which are incurred subsequently and on an ongoing basis after the initial construction costs have been incurred for a specific mountain road, slope or trail may be either expensed or capitalized and depreciated. The proper method of deduction is a factual determination which will require further factual development. The cost of incidental repairs which neither materially add to the value of the property nor appreciably prolong its life, but keep it in an ordinarily efficient operating condition, may be deducted as an expense, provided the cost of

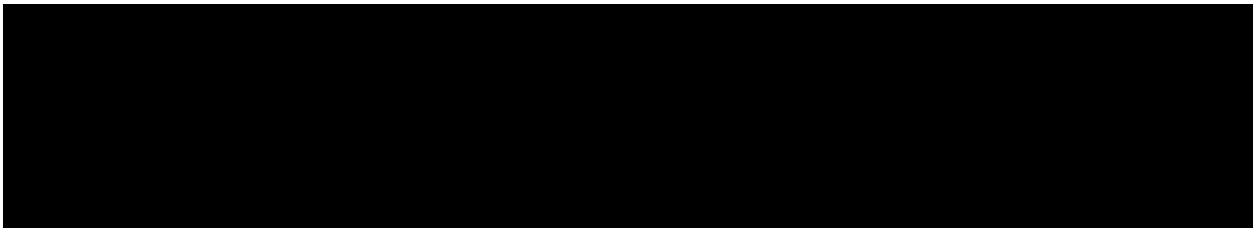
acquisition or production or the gain or loss basis of the taxpayer's plant, equipment, or other property, as the case may be, is not increased by the amount of such expenditures. Repairs in the nature of replacements, to the extent that they arrest deterioration and appreciably prolong the life of the property, shall either be capitalized and depreciated in accordance with section 167 or charged against the depreciation reserve if such account is kept. Treas. Reg. § 1.162-4.

These maintenance costs should not be confused with the construction of new mountain roads, slopes and trails. The costs incurred by X for the construction of new mountain roads, slopes and trails requires the same analysis as our discussion regarding the proper treatment of the portion of the purchase price that was allocated to mountain roads, slopes and trails by X .

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

We do not know what portion of the total costs for which X is claiming a depreciation deduction is attributable to the construction of "slopes", or "trails", or "roads", as we understand the meaning of those terms. In any event, some or possibly none of the expenditures incurred in constructing those different pathways may be depreciable. As provided above, the costs incurred for surfacing the roads are depreciable. Some of the initial "hillside grooming" costs incurred in constructing some or all of those pathways may be depreciable. Hillside grooming, as we understand the meaning of that term, is a recurring expenditure needed to maintain the ski slopes and trails. Thus, the hillside grooming costs have determinable useful lives.

To date, X has not relied upon Rev. Rul. 72-403, 1972-2 C.B., 102, to support its position.
Rev. Rul. 72-403 provides that the initial clearing and grading costs related to the costs of acquiring right-of-way easements for electric transmission and distribution lines are depreciable. The easements for electric transmission and distribution lines have determinable useful lives over which the clearing and grading costs can be depreciated. This position was taken with consideration of the fact that the initial clearing and grading for electric transmission and distribution lines is part of the construction of such lines even though clearing and grading is generally not again necessary when such lines are replaced on the same easements.



[redacted]

Finally, we note that the facts do not provide a complete and clear understanding of the nature of the property at issue. It may well be the case that the vast majority of costs expended on mountain roads and trails, including the initial land clearing and road grading costs, are the type of expenditures that need to be periodically revisited in order to keep the pathways in a serviceable condition. In that case, those expenditures would not qualify as permanent land improvements. Therefore, we recommend that you further develop the facts of this case to more accurately ascertain those expenditures that will last and benefit the taxpayer indefinitely and those which will not.

[redacted]

Please call (202) 622-7840 if you have any further questions.

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