

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

March 10, 2005

Third Party Communication: None
Date of Communication: Not Applicable

Number: **200526019**
Release Date: 7/1/2005
Index (UIL) No.: 168.20-02
CASE-MIS No.: TAM-159746-04

Director, Field Operations, Heavy Manufacturing and Transportation Industry
Large and Mid-Size Business, LMSB:HMT:DFO

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification No

Year(s) Involved:

Date of Conference: January 5, 2005

LEGEND:

Taxpayer:

Facility:

ISSUE:

Whether the tangible personal property, other tangible property, and non-residential real property used in connection with racetrack operations is includible in MACRS Asset Guideline Class 80.0, "Theme and Amusement Parks" (class 80.0) as described in Rev. Proc. 87-56, 1987-2 C.B. 674, for depreciation purposes. The particular emphasis of this issue is whether specialized land improvements are depreciated under class 80.0 or as land improvements described in asset guideline class 00.3 and as nonresidential real property.

CONCLUSION:

The tangible personal property, other tangible property, and non-residential real property used in connection with racetrack operations are not includible in MACRS Asset Guideline Class 80.0, "Theme and Amusement Parks," as described in Rev. Proc. 87-56, for depreciation purposes.

FACTS:

Taxpayer operates "motorsports entertainment facilities." the Facility, large, covering hundreds of acres. During , there were racing events scheduled to be held at the Facility, of which were held, comprising days of racing events. In connection with the racing events at Taxpayer's facilities, motorsports-themed activities and events, tours of the track and pit areas, live entertainment, exhibits and displays relating to racing, fireworks, and food and souvenir concessions are offered in the days surrounding the racing events as well as on the day of the event itself. Many of the motorsports-themed activities and much of the other entertainment are provided by third-party vendors. At times other than when racing events are scheduled, an unrelated third party provides an opportunity to ride in a competition-quality racing vehicle at competition speed as well as the opportunity to drive that car after training.¹ In addition to the racing events described above, an area outside of the track itself is used for racing on . The facilities are also rented by third parties and used for trade shows, conventions, concerts, fairs, television commercials, movies, and training by police departments.

LAW AND ANALYSIS:

Section 167(a) of the Internal Revenue Code provides a depreciation allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence) of property used in a trade or business or held for the production of income. 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 either section 168(a) or section 168(g), the applicable depreciation method and recovery period are determined by reference to class life or by statute. The term "class life" is defined in section 168(i)(1) 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)). The reference to § 167(m) is a reference to that section 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

¹ The Taxpayer notes that there are substantial non-tax reasons for using third-party vendors to provide the activities and events.

taxpayer who elected the asset depreciation range system of depreciation, the depreciation allowance is computed 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) provides rules for classifying property under former section 167(m). Property is included in the asset guideline class for the activity in which the property is primarily used.

Section 1.48-1(e)(1) defines a "building" as any structure or edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is, for example, to provide shelter or housing or to provide working, office, parking, display, or sales space. The term includes, for example, structures such as apartment houses, factory and office buildings, warehouses, barns, garages, railway or bus stations, and stores.

The class lives of property subject to depreciation under section 168 are set forth in Rev. Proc. 87-56. This revenue procedure divides assets into two broad categories: (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 category (that is, Asset Classes 00.11 through 00.4) and an activity category (that is, Asset Classes 01.1 through 80.0) is classified in the asset category. See *Norwest Corp. & Subs. v. Commissioner*, 111 T.C. 105, 156-64 (1998). The business activity Asset Classes described below are set forth in Rev. Proc. 87-56.

Asset class 00.3, Land Improvements:

Includes improvements directly to or added to land, whether such improvements are section 1245 property or section 1250 property, provided such improvements are depreciable. Examples of such assets might include sidewalks, roads, canals, waterways, drainage facilities, sewers (not including municipal sewers in Class 51), wharves and docks, bridges, fences, landscaping shrubbery, or radio and television transmitting towers. Does not include land improvements that are explicitly included in any other class, and buildings and structural components as defined in section 1.48-1(e) of the regulations. ...

Asset class 79.0, Recreation:

Includes assets used in the provision of entertainment services on payment of a fee or admission charge, as in the operation of bowling alleys, billiard and pool establishments, theaters, concert halls, and miniature golf courses. Does not include amusement and theme parks and assets which consist primarily of specialized land improvements or

structures, such as golf courses, sports stadia, race tracks, ski slopes, and buildings which house the assets used in entertainment services.

Asset class 80.0, Theme and Amusement Parks:

Includes assets used in the provision of rides, attractions, and amusements in activities defined as theme and amusement parks, and includes appurtenances associated with a ride, attraction, amusement, or theme setting within the park such as ticket booths, facades, shop interiors, and props, special purpose structures, and buildings other than warehouses, administration buildings, hotels, and motels. Includes all land improvements for or in support of park activities (e.g., parking lots, sidewalks, waterways, bridges, fences, landscaping, etc.), and support functions (e.g., food and beverage retailing, souvenir vending and other nonlodging accommodations) if owned by the park and provided exclusively for the benefit of park patrons. Theme and amusement parks are defined as combinations of amusements, rides, and attractions which are permanently situated on park land and open to the public for the price of admission. This guideline class is a composite of all assets used in this industry except transportation equipment (general purpose trucks, cars, airplanes, etc., which are included in asset guideline classes with the prefix 00.2), assets used in the provision of administrative services (asset classes with the prefix 00.1), and warehouses, administration buildings, hotels, and motels.

Asset class 80.0 was introduced in Rev. Proc. 74-32, 1974-2 C.B. 487. Prior to that revenue procedure, class 79.0 described those activities now encompassed within class 80.0 and was entitled "Recreation and Amusement." Former class 79.0 was described in Rev. Proc. 72-10, 1972-1 C.B. 721, 731, as including assets used in the provision of amusement or entertainment services on payment of a fee or admission charge, as in the operation of bowling alleys, billiard and pool establishments, theatres, concert halls, amusement parks, and miniature golf courses. Former class 79.0 specifically excluded such assets that consist primarily of specialized land improvements or structures, such as golf courses, sports stadia, racetracks, ski slopes, or buildings which house bowling alleys.

Under former § 167(m)(1), a taxpayer depreciated an asset based on the class life prescribed by the Secretary which reasonably reflects the anticipated useful life of that class of property to the industry or other group. Similarly, when § 168(i)(1)(B) was enacted as part of the Tax Reform Act of 1986, Congress gave permission to the Secretary (except in the case of residential real property or non-residential real property) to prescribe a new class life for any property or modify the class life for any assigned property, and instructed that any class life or assigned item prescribed or modified under this authority shall reasonably reflect the anticipated useful life, and the anticipated decline in value over time, of the property to the industry or other group.

The anticipated useful life of the property was linked to the “industry or other group,” because it was expected that taxpayers in the same business activity would have similar experiences. H.R..Conf. Rep. No. 841, 99th Cong., 2d Sess. II-41-42 (1986), 1986-3 (Vol. 4) C.B. 41-42.²

In the present case, the issue is whether the activity conducted by the Taxpayer at its facilities is within that activity described in class 80.0. Application of class 80.0 is limited to theme and amusement parks, defined in class 80.0 as “combinations of amusements, rides, and attractions which are permanently situated on park land and open to the public for the price of admission.” The remainder of class 80.0 in Rev. Proc. 87-56 contains a listing of the assets included within that class. The facilities at issue here have few, if any, attractions that are permanently situated on park land other than the race track itself. Rather, the amusements and attractions are present for those few days surrounding a racing event and then are moved by their owners to another location.³ Thus, these attractions are only temporarily situated on the park land. The Taxpayer argues that class 80.0 requires only the facility itself to be permanently situated on park land rather than the combinations of amusements, rides or other attractions. We do not agree. The definition of class 80.0 states that “[t]heme and amusement parks are defined as combinations of amusements, rides, and attractions which are permanently situated on park land and open to the public for the price of admission.” The “which” in the definition refers to the combinations of amusements, rides or other attractions and not merely to the facility itself. The rides and attractions at Taxpayer’s racetrack, other than those few directly used with the race track, are not permanently situated at the race track facility during their useful life. Rather, these rides and attractions are similar to carnival rides and attractions that are set up at a particular location for a short time and then moved to a different location. A traditional theme or amusement park, by contrast, retains its rides and other attractions so long as those attractions are economically useful.

Furthermore, the activities conducted by the taxpayer are included in the activities described in class 79.0. Class 79.0 is broader than class 80.0 and includes “assets used in the provision of entertainment services on payment of a fee or admission charge.” Included in class 79.0 are the assets used to provide entertainment services but not the land improvements and buildings used in providing these services. Class 79.0 specifically excludes (1) specialized land improvements and structures such as golf courses, sports stadia, racetracks, ski slopes, and (2) buildings that house the assets used in providing entertainment services. The entertainment services provided by

² In 1988, the Secretary’s authority to prescribe class lives was changed to the authority to monitor and analyze actual experience with respect to depreciable assets in § 6253 of Technical and Miscellaneous Revenue Act of 1988, Pub. L.100-647.

³ We note that tours of the race track and pit areas are popular events; however, these tours of static facilities are more closely analogous to tours of other sports stadiums and do not satisfy the requirements of class 80.0.

taxpayer are essentially the same entertainment services that are provided at sports stadia and other racetracks. The entertainment services provided at sports stadia and racetracks are the type of entertainment services included in asset class 79.0; otherwise, exclusion of these specialized land improvements from class 79.0 would not have been necessary. Class 79.0 also specifically excludes assets included in class 80.0. Class 80.0 lists included land improvements; however, this list does not specifically include sports stadia and racetracks. Because class 80.0 was excluded from class 79.0, if class 80.0 had been intended to include specialized land improvements such as, racetracks and sports stadia, these specialized land improvements would have been listed with the other land improvements that are specifically included in class 80.0.

In the present case, the racing events offered at Taxpayer's motorsports entertainment facilities constitute entertainment services and the assets used to provide those entertainment services are included within class 79.0. However, the buildings (to the extent included in the definition of buildings or structural components as set forth in § 1.48-1(e)) and land improvements described in class 00.3 are specifically excluded from class 79.0.

Prior to the creation of class 80.0 by Rev. Proc. 74-32 by excluding it from class 79.0 and adding to it certain land improvements that were excluded from class 79.0, former class 79.0 excluded specialized land improvements such as assets that consist primarily of sports stadia and race tracks. The continuation of this exclusion in current class 79.0 does not indicate, as argued by Taxpayer, that those assets were moved to class 80.0 when that class was created out of former class 79.0. The separate exclusion contained within the description of class 79.0 for "amusement and theme parks" describes *all* the assets that were moved from former class 79.0 to class 80.0. Accordingly, land improvements associated with a class 79.0 activity are included in asset class 00.3. Buildings associated with a class 79.0 activity are depreciated as nonresidential real property, if they meet the definition of a building set forth in § 1.48-1(e)(1), under the rules in §§ 168(c) and 168(g)(2)(C).

CAVEAT

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.