Reg. Section 1.263(a)-1T

Capital expenditures; in general (temporary)

(a) General rule for capital expenditures. Except as provided in chapter 1 of the Internal Revenue Code, no deduction is allowed for--

(1) Any amount paid for new buildings or for permanent improvements or betterments made to increase the value of any property or estate; or

(2) Any amount paid in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

(b) Coordination with section 263A. Section 263(a) generally requires taxpayers to capitalize an amount paid to acquire, produce, or improve real or personal tangible property. Section 263A generally prescribes the direct and indirect costs that must be capitalized to property produced by the taxpayer and property acquired for resale.

(c) Examples of capital expenditures. The following amounts paid are examples of capital expenditures:

(1) An amount paid to acquire or produce a unit of real or personal tangible property. See § 1.263(a)-2T.

(2) An amount paid to improve a unit of real or personal tangible property. See § 1.263(a)-3T.

(3) An amount paid to acquire or create intangibles. See § 1.263(a)-4.

(4) An amount paid or incurred to facilitate an acquisition of a trade or business, a change in capital structure of a business entity, and certain other transactions. See § 1.263(a)-5.

(5) An amount paid to acquire or create interests in land, such as easements, life estates, mineral interests, timber rights, zoning variances, or other interests in land.

(6) An amount assessed and paid under an agreement between bondholders or shareholders of a corporation to be used in a reorganization of the corporation or voluntary contributions by shareholders to the capital of the corporation for any corporate purpose. See section 118 and § 1.118-1.

(7) An amount paid by a holding company to carry out a guaranty of dividends at a specified rate on the stock of a subsidiary corporation for the purpose of securing new capital for the subsidiary and increasing the value of its stockholdings in the subsidiary. This amount must be added to the cost of the stock in the subsidiary.

(d) Amounts paid to sell property --(1) In general. Commissions and other transaction costs paid to facilitate the sale of property generally must be capitalized. However, in the case of dealers in property, amounts paid to facilitate the sale of property are treated as ordinary and necessary business expenses. See § 1.263(a)-5(g) for the treatment of amounts paid to facilitate the disposition of assets that constitute a trade or business.

(2) Treatment of capitalized amount. Amounts capitalized under paragraph (d)(1) of this section are treated as a reduction in the amount realized and generally are taken into account either in the taxable year in which the sale occurs or in the taxable year in which the sale is abandoned if a loss deduction is permissible. The capitalized amount is not added to the basis of the property and is not treated as an intangible under § 1.263(a)-4.

(3) Examples. The following examples, which assume the sale is not an installment sale under section 453, illustrate the rules of this paragraph (d):

Example 1. Sales costs of real property.

X owns a parcel of real estate. X sells the real estate and pays legal fees, recording fees, and sales commissions to facilitate the sale. X must capitalize the fees and commissions and, in the taxable year of the sale, offset the fees and commissions against the amount realized from the sale of the real estate.

Example 2. Sales costs of dealers.

Assume the same facts as in Example 1, except that X is a dealer in real estate. The commissions and fees paid to facilitate the sale of the real estate are treated as ordinary and necessary business expenses under section 162.

Example 3. Sales costs of personal property used in a trade or business.

X owns a truck for use in X's trade or business. X decides to sell the truck on November 15, Year 1. X pays for an appraisal to determine a reasonable asking price. On February 15, Year 2, X sells the truck to Y. X is required to capitalize in Year 1 the amount paid to appraise the truck and, in Year 2, is required to offset the amount paid against the amount realized from the sale of the truck.

Example 4. Costs of abandoned sale of personal property used in a trade or business.

Assume the same facts as in Example 3, except that, instead of selling the truck on February 15, Year 2, X decides on that date not to sell the truck and takes the truck off the market. X is required to capitalize in Year 1 the amount paid to appraise the truck. However, X may treat the amount paid to appraise the truck as a loss under section 165 in Year 2 when the sale is abandoned.

Example 5. Sales costs of personal property not used in a trade or business.

Assume the same facts as in Example 3, except that X does not use the truck in X's trade or business, but instead uses it for personal purposes. X decides to sell the truck and on November 15, Year 1, X pays for an appraisal to determine a reasonable asking price. On February 15, Year 2, X sells the truck to Y. X is required to capitalize in Year 1 the amount paid to appraise the truck and, in Year 2, is required to offset the amount paid against the amount realized from the sale of the truck.

Example 6. Costs of abandoned sale of personal property not used in a trade or business.

Assume the same facts as in Example 5, except that, instead of selling the truck on February 15, Year 2, X decides on that date not to sell the truck and takes the truck off the market. X is required to capitalize in Year 1 the amount paid to appraise the truck. Although the sale is abandoned in Year 2, X may not treat the amount paid to appraise the truck as a loss under section 165 because the truck was not used in X's trade or business or in a transaction entered into for profit.

(e) Amount paid. In the case of a taxpayer using an accrual method of accounting, the terms amount paid and payment mean a liability incurred (within the meaning of § 1.446-1(c)(1)(ii)). A liability may not be taken into account under this section prior to the taxable year during which the liability is incurred.

(f) Accounting method changes. Except as otherwise provided in this section, a change to comply with this section is a change in method of accounting to which the provisions of sections 446 and 481, and the regulations thereunder apply. A taxpayer seeking to change to a method of accounting permitted in this section must secure the consent of the Commissioner in accordance with § 1.446-1(e) and follow the administrative procedures issued under § 1.446-1(e)(3)(ii) for obtaining the Commissioner's consent to change its accounting method.

(g) Effective/applicability date. This section applies to taxable years beginning on or after January 1, 2012. For the applicability of regulations to taxable years beginning before January 1, 2012, see § 1.263(a)-1 in effect prior to January 1, 2012 (§ 1.263(a)-1 as contained in 26 CFR part 1 edition revised as of April 1, 2011).

(h) Expiration date. The applicability of this section expires on December 23, 2014.