Revenue Ruling 75-491

Section 48-- Definitions; Special Rules

July 1975

Investment credit; molten tin used in flat glass manufacture. Molten tin used in the float process manufacture of flat glass is not depreciable property and does not qualify as *section 38* property for investment credit purposes. However, the cost of the tin consumed in the production process may be deducted as an operating expense under *section 162 of the Code*, subject to being included in the inventoriable cost of producing the glass.

Advice has been requested whether molten tin used in the manufacture of flat glass by the float process is depreciable property that qualifies as "*section 38* property" for investment credit purposes.

A taxpayer engaged in the business of manufacturing flat glass operates a glass making facility that utilizes the continuous float process. This process involves the use of molten tin in an inert atmosphere within a float glass forming and finishing chamber.

Molten glass from the melting and refining furnace is delivered in a continuous stream onto the upper surface of a layer of molten tin in the chamber. [*2] The molten tin provides a flat, non-wetting, working surface and acts as an essentially frictionless support for the glass from the time it enters the chamber in molten form to the time it leaves the chamber as glass ribbon after undergoing shaping and processing.

Impurities that accumulate in the molten tin during processing are removed periodically. A certain amount of tin is lost as a result of this operation. Losses of tin also occur due to handling and, to a minor extent, due to vaporization. Additional tin is added to the chamber in order to keep the level of the tin above the minimum operative level and to raise it to the optimum depth necessary for the production of high quality flat glass.

The amount of tin replaced annually is approximately 28,000 pounds as compared to approximately 300,000 pounds of tin used in an initial installation.

Section 38 of the Internal Revenue Code of 1954 allows a credit against Federal income tax for qualified investment in *section 38* property. The determination of what property qualifies as *section 38* property is made in accordance with the rules provided in *section 48*.

Section 48(a) (1) of the Code provides, in pertinent part, that in order to [*3] qualify as *section 38* property, the property must be depreciable and have a useful life of 3 years or more.

Section 162 of the Code provides the general rule that there shall be allowed as a deduction all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

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

Section 1.162-3 of the Income Tax Regulations provides, in part, that taxpayers carrying materials and supplies on hand should include in expenses the charges for materials and supplies only in the amount that they are actually consumed and used in operation during the taxable year.

Section 1.167(a)-2 of the regulations provides, in part, that the depreciation allowance in the case of tangible property applies only to that part of the property that is subject to wear and tear, to decay or decline from natural causes, to exhaustion, and to obsolescence.

A depreciation deduction is allowable only with respect to property that diminishes in value by reason of exhaustion, [*4] wear and tear, or obsolescence. In the instant case, the tin is not a material of construction that becomes part of a depreciable property; it does not lose its identity as tin in the elemental state. The tin is a fungible commodity a portion of which is consumed and used in operation during the taxable year. The portion that remains has not diminished in value by reason of its use. When a quantity of tin is added to bring the level of tin to the level that existed at the beginning of the year, the property is essentially the same that existed at the beginning of the year.

Accordingly, in the instant case, the initial installation of tin is property that is not subject to depreciation, and therefore does not qualify as *section 38* property for investment credit purposes. The amount of tin that is added during the year to keep the molten tin at an optimum level is equal to the amount of tin used and consumed during the year in the production of the glass. The cost of the tin consumed is deductible under *section 162 of the Code* and regulations thereunder as an expense of operation, subject to being included in the inventoriable cost of producing the glass as a direct production cost. See [*5] *section 1.471-11(b)(2)(i)* and *(ii)* of the regulations.