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Eligibility for Expense Method Depreciation

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allocating interest between business and nonbusiness obligations do not apply if the borrowed funds are distributed directly to a third party selling property to or providing services for the borrower such as with a purchase money security interest.\footnote{28}

If borrowed funds are commingled with other funds, several principles apply which govern the allocation including the following —

- Any expenditure made from an account within 15 days after debt proceeds are deposited in the account may be treated as made from the debt proceeds.\footnote{25}
- In general, an expenditure from a checking or similar account is treated as made at the time the check is written on the account, provided the check is delivered or mailed to the payee within a reasonable time.\footnote{26}
- After borrowed funds are deposited in an account, amounts held in the account are treated as held for investment but are reallocated if used for another expenditure.\footnote{27}
- If an account already contains nonborrowed funds, the amounts first expended are considered to be borrowed funds.\footnote{28}
- Interest on the proceeds of a loan used to pay off existing indebtedness is characterized the same as interest on the original loan.\footnote{29}

**FOOTNOTES**

2. I.R.C. § 461(g)(1).
3. I.R.C. § 461(g)(2).
11. See note 9 supra and accompanying text.
16. Id.
18. Letter from the Office of Chief Counsel, IRS, to Farmer Program Division, FmHA, dated May 22, 1989 (reproduced in full in App. 39-C, 4 Harl, supra note 1).
19. Id.
22. Id.
30. See Notice 89-35, 1989-1 C.B. 675 (rules provided in notice may not be used by taxpayers forming corporation or partnership with intent to use rules to circumvent Temp. Treas. Reg. § 1.168-8T).
31. Id.

**ELIGIBILITY FOR EXPENSE METHOD DEPRECIATION**

by Neil E. Harl

The Revenue Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388 (1990), has amended the eligibility requirements for expense method depreciation for property placed in service after 1990. \textit{Id.}, Sec. 11801. Before the amendment, expense method depreciation was limited to "Section 38 property," I.R.C. § 48(a), which was originally enacted for purposes of investment tax credit eligibility and which excluded horses from eligibility for investment tax credit and thus from expense method depreciation. I.R.C. § 48(a)(6).

The 1990 amendment substituted "Section 1245 property" for "Section 38 property" for purposes of expense
method depreciation eligibility for property placed in service after 1990. I.R.C. § 179(d)(1), as amended by RRA 1990, Sec. 11801. The term Section 1245 property, while similar to the definition of Section 38 property, is significantly more narrow in several respects and more expansive in a few instances. Thus, horses are not ineligible for expense method depreciation under the new rules. Moreover, the "wash sale" rules for livestock which appeared in the definition of Section 38 property are not part of the definition of Section 1245 property. I.R.C. § 48(a)(6) before amendment by RRA 1990. Likewise, the Section 1245 property definition does not include mention of (1) eligibility of elevators and escalators, (2) the special rules for property outside the United States, (3) property used for lodging, (4) property used by certain tax exempt organizations, (5) property used by governmental units or foreign persons, (6) property completed abroad or predominantly of foreign origin, (7) and boilers fueled by oil or gas. I.R.C. §§ 48(A)(1)(C),(2), (3), (4), (5), (6), (10) before amendment by RRA 1990. The Section 1245 property definition, on the other hand, excludes more items subject to amortization that the Section 38 property definition. Compare I.R.C. § 1245(a)(3)(C) with I.R.C. § 48(a)(8).

Both definitions include personal property (although the Section 38 definition refers to tangible personal property); single purpose agricultural and horticultural structures; and "other tangible property" used for storage, for research or as an integral part of manufacturing, production or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services.

For many farm and ranch taxpayers the 1990 amendment will make no difference in eligibility for expense method depreciation. However, some taxpayers will find the new definition to be quite different as applied to their unique factual situation.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

OPEN AND NOTORIOUS. Prior to the plaintiff's or defendant's ownership of their neighboring land, the prior owner of the defendant's land had sold a strip of land which bordered the plaintiff's land but the purchaser of the strip fenced off a strip so far on to the plaintiff's land that a portion of the plaintiff's land was on the defendant's side of the strip. The defendant's use of the disputed area included planting and harvesting trees, cutting a road, hunting and posting "no trespassing" signs. The defendant also repaired much of the fence on the defendant's side of the strip such that the fence could contain cattle. The court held that the defendant had open and notorious occupation of the disputed area and that the area had been enclosed by a substantial fence, even though part of the fence was in disrepair. Klinefelter v. Dutch, 467 N.W.2d 192 (Wis. App. 1991).

ANIMALS

HORSES. The plaintiff brought an action against the owner of horse riding stables for personal injuries resulting from a fall from a horse. The court held that the defendant was not liable because the defendant had no prior knowledge of the horse's alleged vicious propensity. The court found that a thoroughbred horse was not inherently dangerous. Landes v. H.E. Farms, Inc., 564 N.Y.S.2d 151 (App. Div. 1991).

BANKING

GOOD FAITH. The plaintiffs had borrowed money from the defendant for their dairy operation for several years but had decided to quit the dairy operation by participating in the federal Dairy Termination Program. As part of a request to renegotiate the loan with the defendant in light of the possible DTP participation, the plaintiffs submitted a proposal for restructuring their loans but the defendant rejected the proposal. The plaintiffs argued that the defendant had violated a good faith duty to consider the loan restructuring proposal. The plaintiffs argued that the duty of good faith dealing arose because of the longstanding relationship between the parties. The court held that no good faith duty arose from the course of dealing between the parties and was not required by the loan agreements between the parties. Badgett v. Security State Bank, 807 P.2d 356 (Wash. 1991), rev'g 56 Wash. App. 872, 786 P.2d 302 (1990).

BANKRUPTCY

GENERAL

EXEMPTIONS. The debtors claimed an exemption in their interest as vendees of a land contract. The exemption was not objected to but the trustee applied for judicial approval to sell the property with distribution of the proceeds to the land contract vendor, to the debtors in the amount of their claimed exemption and to the estate. The court held that the exemption caused the land to revert to the debtors and the land was no longer estate property subject to sale by the trustee. Seifert v. Selby, 125 B.R. 174 (E.D. Mich. 1989).

The debtor was not allowed an exemption for firearms as household goods. The court allowed an exemption for the debtor's interest in a pension plan where the plan was less than $8,000 and the debtor would not accumulate substantial funds beyond what would be normal or anticipated. In re Coffman, 125 B.R. 238 (W.D. Mo. 1991).

The debtor's interests in three ERISA qualified profit sharing plans were included in the bankruptcy estate and were not exempt because the plans were not reasonably necessary for the debtor's maintenance and support. In re Davis, 125 B.R. 242 (Bankr. W.D. Mo. 1991).