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DEPRECIATING MOBILE HOMES
— by Neil E. Harl*

Along with the broader issue of the cost recovery period for farm and ranch houses, the question of how to depreciate mobile homes and other types of temporary housing under the Modified Accelerated Cost Recovery System (MACRS) has confronted taxpayers from time to time. A July, 2001, Tax Court case has provided some insight into how such structures are to be depreciated.

Residential rental property.

Under MACRS, assets used in a business or held for the production of income are depreciable over 27 1/2 years if the assets are “residential rental property.” The term “residential rental property” is defined as “any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units.” A “dwelling unit” is, in turn, defined as “a house or apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one-half of the units in which are used on a transient basis.” Moreover, if any part of the building or structure is occupied by the taxpayer, “the gross rental income from such building or structure shall include the rental value of the portion so occupied.”

For purposes of ACRS depreciation, which applied to property placed in service after 1980 and before 1986, manufactured homes were subject to cost recovery over 10-years.

Rupert v. Commissioner

In the July, 2001, case of Rupert v. Comm’r, the taxpayer had purchased a 28 foot mobile home in 1982 for $36,000 for use on a lake site. The taxpayer removed the wheels and axles, placed the mobile home on foundation blocks and secured the structure with steel straps attached to ground anchors. The taxpayers also added improvements to the structure including a 12 by 24 foot deck, a “concrete perimeter,” storage area, electrical wiring, a water system, a boathouse, a dock and an electric lift.

The structure was used by the taxpayers occasionally as a vacation home from 1982 to 1985. Beginning in 1991, the structure was reported for income tax purposes as rental property.

The taxpayers claimed depreciation beginning in 1991 on the basis of a 10-year life (under the assumption that the property was placed in service in 1982 when it was purchased and installed as a vacation home and, therefore, could be depreciated over 10-years). The Internal Revenue Service disagreed with the 10-year recovery period and insisted that the property had been placed in service in 1991 when rental commenced. The Tax Court agreed and held that the structure was depreciable over 27 1/2 years as residential rental property under MACRS inasmuch as the

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property was placed in service in the year it was first rented and that determined the classification for cost recovery purposes. The court noted that if the structure had been placed in service before 1987, the cost recovery period would have been 10-years. In a footnote, the court stated that had the structure been placed in service permanently on the lake site. Had it not been so installed, the question is whether the mobile home would be deemed a “building or structure” which is required for the property to be classified as “residential rental property.” If it were not so classified, the property might well be deemed seven-year property on the basis that it “does not have a class life.”

FOOTNOTES

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-ALM § 13.03.*

AVOIDABLE LIENS. The debtors were farmers and claimed two pickup trucks as exempt under the Oklahoma exemptions for implements of husbandry and tools of the trade, Okla. Stat. Tit. 31, §§ 1(A)(5), (6). The debtors sought to avoid secured liens on the pickups as impairing the exemptions. The secured creditor had not filed any objection to the exemptions for the pickups and the debtor argued that the failure to object prevented any objection to the lien avoidance request. The court held that, because secured creditors do not need to file claims and objections and secured liens pass through bankruptcy, unless avoided, the creditor could resist the avoidance action even though no exemption objection was made. The court held that the creditors failed to demonstrate that the pickups were not used as tools in the debtors’ farming business; therefore, the pickups were exempt tools of the trade and the liens against the trucks were avoidable. In re Thompson, 263 B.R. 134 (Bankr. W.D. Okla. 2001).

EXEMPTIONS

HOMESTEAD. The debtors owned a rural residence on one parcel of land and three rental houses on three separate rural parcels of land. The debtors claimed all four properties as exempt rural residences under Tex. Const. Art XVI, § 51. The trustee argued that the three rental properties were not eligible for the exemption because the properties were not used by the debtors as a rural home. The court noted that separate parcels of farm land have been held to be included in the rural homestead, based upon the close connection between the operation of the farm and the use of the residence. However, the court held that mere use of income from separate parcels as support for the residence was not sufficient connection to include residential rental properties within the exempt rural homestead; therefore, the three rental properties were not eligible for the exemption. In re Webb, 263 B.R. 788 (Bankr. W.D. Tex. 2001).

FEDERAL TAX-ALM § 13.03[7].*

ADMINISTRATIVE EXPENSES. Under I.R.C. § 67(e), deductions for costs paid or incurred in connection with the administration of an estate or trust that would not have been incurred if the property were not held in such trust or estate shall be treated as allowable in arriving at adjusted gross income. The IRS ruled that Section 67(e) applied to the deductible administrative expenses of bankruptcy estates. Ltr. Rul. 200136004, May 17, 2001.

DISMISSAL. The debtor filed for Chapter 13 and the plan provided for payment of all nondischargeable taxes. During the three year plan the debtor made all the payments but failed to file and pay taxes for the three years of the plan.