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INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

Index (UIL) No.: 612.02-00
CASE MIS No.: TAM-103379-99

MAY 13 1999

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No.:
Years Involved:
Date of Conference:

LEGEND:

A =

ISSUE(S): Is A entitled to currently deduct expenditures for a conveyor system and related equipment and structures under section 1.612-2(a) of the Income Tax Regulations?

CONCLUSION: If the District Director makes a final determination that the expenditures were not incurred solely because of the recession of the working face; the expenditures for the conveyor system are not deductible under section 1.612-2(a) of the regulations.

FACTS: A operates a quarry to produce several different aggregates. After the removal of overburden, the in place rock is loosened from the mining face by blasting and ripping with bulldozers. The rock is temporarily stockpiled on the quarry floor. Loaders feed the rock to a primary crusher. After crushing, the rock is transferred, via a belt conveyor, to the processing plant where the rock is further crushed, washed and screened into different sizes. Production from the plant is then sold to customers.

As quarry operations continued, the mining face continued to recede into the hillside as rock was removed. The overburden was dumped in the mined out portion of the quarry. In the course of mining, the space available for dumping overburden was exhausted. In order to maintain the established production capacity of the quarry, A had to change its overburden

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disposal site and constructed a conveyor to transport the overburden to its adjacent property for disposal.

LAW AND ANALYSIS: Section 1.612-2(a) of the regulations provides that certain expenditures, although capital in nature, shall be deducted as ordinary and necessary business expenses. These expenditures (for equipment, its installation and housing) must be necessary to maintain the normal output of the mine and be necessitated solely because of the recession of the working face of the mine.

Section 1.612-2(a), further provides that the expenditures cannot (1) increase the value of the mine, (2) decrease the cost of production of minerals, nor (3) represent an amount for restoration of the property or making good the exhaustion thereof for which an allowance has been made.

A and the District Director agree that these three exceptions are not relevant in this case. A and the District Director also agree that the expenditures for the conveyor system are necessary to maintain the normal output of the mine.

There is also no question that the working face has receded - a situation that occurs in all mines as mineral is removed from the working face. However, to qualify as a deduction under section 1.612-2(a) of the regulations, the expenditures must be necessitated ***solely*** because of the recession of the working face. (see Marsh Fork Coal Co. vs. Lucas, 42 F.2d 83 (4th. Cir 1930), in which expenditures for an electric locomotive, mine cars and rails (needed because of the increased distance to the mine face) were found to be deductible. Also, see Roundup Coal Mining Co. vs. Commissioner, 20T.C. 388 (1953) and United States Gypsum Co. vs. United States, 206 F. supp. 744 (D. Ill. 1962) in which expenditures necessary to continue mining further in a horizontal direction (Roundup) and a vertical direction (U.S. Gypsum) were deductible.)

Expenditures necessary to maintain production of the mine which are not exclusively related to the movement of the working face are not deductible under section 1.612-2(a) of the regulations even though the mining face had receded during the course of mining. See Commissioner vs. H.E. Harman Coal Co., 200 F.2d 415 (4th. Cir. 1952), in which the expenditures were not deductible because they were incurred because of geological and manpower problems. Also see Kennecott Corp. vs. United States, 347 f.2d 275 (ct. Cl. 1965), Geoghegan & Mathis, Inc. vs Commissioner, 55 T.C. 672 (1971), aff's 453 f.2d 1324 (6th. Cir.), cert. denied, 409 U.S. 842 (1972) and Cushing Stone Co., Inc. vs. United States, 535 F.2d 27 (ct. Cl. 1976).

The above cited cases indicate that section 1.612-2(a) of the regulations requires a direct and exclusive causal relationship between the expenditures and the recession of the working face in order for that expenditure to qualify for a current deduction.

The determination as to whether an expenditure was incurred solely because of the recession of the working face is a factual matter within the purview of the District Director. Accordingly, if the District Director makes a final determination that the expenditures were not incurred solely because of the recession of the working face, the expenditures for the conveyor system are not deductible under section 612-2(a) of the regulations.

CAVEAT(S):

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