



Tax Reduction Letter

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GCM 39443

June 10, 1985

Br5:PAMix

Date Numbered: November 12, 1985

Memorandum to:

TO: CHARLES M. MORGAN III

Associate Chief Counsel (Technical)

Attention: Director, Corporation Tax Division

This is in reply to your memorandum of January 14, 1985, submitting for consideration under the early referral procedure the above captioned request for technical advice, control number 4J2114.

ISSUES

1. Is a motorhome used by the taxpayer for travel to, and lodging at, temporary work assignments treated as two separate assets?
2. If the motorhome is treated as a single asset, is it used predominantly to furnish lodgings or primarily as a means of transportation?
3. Does the lodgings exception apply only to property leased to third parties as a lodging facility?

CONCLUSIONS

1. Section 48(a)(3) excludes from the definition of "section 38 property" property which is used predominantly to furnish lodgings. Treas. Reg. section 1.48-1(h)(1) excepts from the definition of property used predominantly to furnish lodgings "property used primarily for transportation. The regulations do not contemplate separating a motorhome into two separate assets.
2. If the taxpayer used the motorhome primarily for lodgings, no investment credit is allowable for the motorhome. If the taxpayer used the motorhome primarily for transportation, an investment credit may be allowable on the portion of the cost attributable to business use. Under the facts of this case, we believe the motorhome was used predominantly for lodging.
3. The lodging exception applies to any property used in a facility that the taxpayer uses as lodging while temporarily away from home on business.

FACTS

In July 1982, the taxpayer acquired a motorhome which he used as transportation to, and lodgings at, temporary work sites. The taxpayer drove the motorhome 2,734 miles in 1982, 2,256 miles of which were for business purposes. The taxpayer stayed at temporary work sites for periods of two days to two weeks. The file does not indicate that the taxpayer used the motorhome as transportation to work sites on trips in which he did not use the motorhome for lodgings. The file also does not indicate whether the taxpayer used the motorhome for lodgings during personal trips.

The taxpayer claimed depreciation and an investment tax credit with respect to the business use of the motor home for 1982. The taxpayer calculated the amounts allowable by multiplying the amounts of depreciation and investment tax credit that would have been allowable had there been no personal use of the motorhome, by a fraction, the numerator which was the number of miles driven for business and the denominator of which was the total number of miles driven. The taxpayer has asserted that this allocation is appropriate because the motorhome was used primarily for transportation. The taxpayer determined that the motorhome was used primarily for transportation because, he asserted, most of the cost of the motorhome would be allocable to the transportation, as opposed to the lodging, components.

ANALYSIS

Section 38(a) provides a credit against the income tax in an amount determined in sections 46 through 50.

Section 48(a) defines section 38 property to be only that property which is recovery property within the meaning of section 168 and any other property with respect to which depreciation is allowable and having a useful life of three years or more.

Section 48(a)(3) excepts from the definition of section 38 property, property which is used predominantly to furnish lodgings or in connection with furnishing lodging. Carved out of the lodging exception is property used by a hotel or motel in connection with the trade or business of furnishing lodgings where the predominant portion of the accommodations is used by transients.

Section 1.48-1(b)(2) provides that, if for the taxable year in which property is placed in service a deduction for depreciation is allowable only with respect to part of the property, then only a proportionate part of the property qualifies as section 38 property for purposes of determining the amount of the allowable credit. This provision is illustrated by an example in which property is used 80 percent in a trade or business and 20 percent for personal purposes. The example provides that 80 percent of the cost of the property qualifies as section 38 property.

Section 1.48-1(h)(1) provides that the term "section 38" property does not include property which is used predominantly to furnish lodging. Property used in the living quarters of a lodging facility is considered to be used predominantly to furnish lodging. The term "lodging facility" includes any part of a facility where sleeping accommodations are provided and let, but does not include a facility used primarily as a means of transportation (such as an aircraft, vessel or railroad car).

You have asked us to consider three issues. The first is whether the motorhome may be treated as two separate assets, one used for transportation, the other for lodging. The second is, assuming that the motorhome cannot be treated as two separate assets, whether the motorhome is used

predominantly to furnish lodging or primarily as a means of transportation. The third is, assuming the motorhome is deemed to be used predominantly to furnish lodging, whether the taxpayer is furnishing lodging to himself.

Separate Assets

Section 1.48-1(h)(1) specifically prescribes the treatment of assets that are used both for lodging and transportation. The regulation characterizes entire property according to its predominant use. The regulation concedes that property may have mixed uses yet treats such property, for purposes of the investment credit, as being only one asset. Although we believe that the drafters of the regulations did not contemplate motorhomes, we believe, nonetheless, that motorhomes are mixed-use assets that are covered by the regulation. Division of such an asset into two separate assets, one used for transportation, the other for lodging, would require a change in the regulations.

We realize that treating a mixed-use asset as a single asset is not without its administrative difficulties. Comparing transportation and lodging uses is as unsatisfactory as comparing apples and oranges. Transportation use is measured in miles while lodging use is measured by days occupied. We have been unable to find a common denominator that would make such a comparison easy. Instead we used a facts and circumstances test. Factors we considered include: the miles the vehicle is driven, the days away from home on each trip, the type of vehicle, the number of days the motorhome is used for lodging, and the extent to which the vehicle is used as transportation on business trips in which other lodging is used.

Lodging or Transportation

In the instant case, the taxpayer determined the percentage of allowable depreciation and investment tax credit by reference to the number of miles the motorhome was driven. No adjustments were made for the portion of the motorhome used for lodging because the lodging exception does not apply to property used primarily for transportation. The taxpayer determined that the motorhome was used primarily for transportation because more than fifty percent of the cost of the motorhome was allocable to the transportation, as opposed to the lodging, component of the motorhome.

Even if the taxpayer's assessment of the relative values of the lodging and transportation components were accurate, which we doubt, we do not believe a cost analysis is the appropriate measure of the primary or predominant use of a motorhome. If the taxpayer used the motorhome for transportation twenty days, and for lodgings seventy days, the taxpayer's use of the motorhome would appear to be predominantly for lodging whatever the relative cost of the components of the motorhome. ¹

We believe that the primary use test in section 1.48-1(h)(1) requires a comparison of uses (transportation and lodging) that cannot be reduced to a specific formula. As a general rule, if for business purposes, the motorhome is used for lodging at least as many days as it is used for transportation, we believe that the predominant use is for lodging. ² This is particularly true in a case such as this one in which the taxpayer spends an extended time away from home at a temporary worksite and the transportation mileage is very low. In the instant case, the taxpayer's business use of the motorhome was predominantly for lodging.

Furnishing Lodging

It has been suggested that even if the motorhome is determined to have been used for lodging, the lodging exception does not apply because a taxpayer cannot furnish lodging to himself. Cited as support for this proposition are *Aaron Rents, Inc. v. United States*, 78-2 U.S.T.C. 9727, 462 F. Supp. 65 (N.D.Ga. 1978) and Rev. Rul. 81-133, 1981-1 C.B. 21. At issue in *Aaron* was the availability of the investment tax credit to a taxpayer who operated a furniture rental company, renting residential furniture to both landlords and tenants. The Service had disallowed the credit for all of the furniture, arguing that the furniture was used in connection with furnishing lodgings. The district court agreed that the furniture leased to landlords was used in connection with furnishing lodgings, but found that the furniture leased to tenants was not because tenants do not furnish lodgings to themselves. Rev. Rul. 81-133 adopts the rationale of *Aaron Rents*.

We believe that *Aaron Rents* can be distinguished from this case and any other case in which the sleeping quarters are used by the taxpayer while away from home on business. In *Aaron*, the tenants were using the property in their residence. In this case, the property is being used in a motorhome that is used as lodging while away from home. The taxpayer is providing himself lodgings while away from home in the form of a recreational vehicle, rather than renting an apartment. 3

The Tax Court would appear to agree. In a case involving a taxpayer who lived at a work site in a travel trailer, the Tax Court found that the taxpayer's tax home was at the worksite. The court noted, however, that even if the taxpayer had been found to have been temporarily away from home on business, no investment credit would have been allowable with respect to the travel trailer because it was used predominantly to furnish lodgings. *Abbott v. Commissioner*, 42 T.C.M. 646, T.C. Memo. 1981-424.

James F. Malloy

Director

By:

William P. O'Shea

Assistant Chief, Branch 5

Interpretative Division

1 The taxpayer is correct, however, in suggesting that one factor to be considered is the type of vehicle used. A van equipped with a bed is less likely to be used predominantly for lodging than a \$50,000 motorhome.

2 This indicia of lodging as primary use might be rebutted if the motorhome were driven long distances every day of business use.

3 It has been suggested that a taxpayer's use of a motorhome as lodging while away from home is analogous to taking a room in a hotel or motel and that the use by transients exception to the lodging exception contained in section 1.48-1(h)(2) should apply. We cannot agree. A taxpayer who uses a motorhome as lodging while away from home retains ownership of the motorhome and is in no way a transient with respect to that motorhome.