

Reg Section 1.263(a)-2(e)(1)

Amounts paid to acquire or produce tangible property.

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(e) Defense or perfection of title to property.



(1) In general. Amounts paid to defend or perfect title to real or personal property are amounts paid to acquire or produce property within the meaning of this section and must be capitalized.

(2) Examples. The following examples illustrate the rule of this paragraph (e):

Example (1). Amounts paid to contest condemnation. X owns real property located in County. County files an eminent domain complaint condemning a portion of X's property to use as a roadway. X hires an attorney to contest the condemnation. The amounts that X paid to the attorney must be capitalized because they were to defend X's title to the property.

Example (2). Amounts paid to invalidate ordinance. Y is in the business of quarrying and supplying for sale sand and stone in a certain municipality. Several years after Y establishes its business, the municipality in which it is located passes an ordinance that prohibits the operation of Y's business. Y incurs attorney's fees in a successful prosecution of a suit to invalidate the municipal ordinance. Y prosecutes the suit to preserve its business activities and not to defend Y's title in the property. Therefore, the attorney's fees that Y paid are not required to be capitalized under paragraph (e)(1) of this section.

Example (3). Amounts paid to challenge building line. The board of public works of a municipality establishes a building line across Z's business property, adversely affecting the value of the property. Z incurs legal fees in unsuccessfully litigating the establishment of the building line. The amounts Z paid to the attorney must be capitalized because they were to defend Z's title to the property.

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