

Revenue Ruling 74-265

January 1974

Depreciation; landscaping. Landscaping consisting of perennial shrubbery and ornamental trees immediately adjacent to the buildings in a newly-constructed apartment complex is property depreciable over the life of the buildings if the replacement of the buildings at the expiration of their useful lives will destroy the landscaping; other landscaping on the grounds of the complex is considered general land improvement the cost of which is to be added to the taxpayer's basis in the land.

Advice has been requested whether land preparation consisting of shrubbery and other elements of landscaping is depreciable property for Federal income tax purposes, under the circumstances set forth below.

The taxpayer constructed and operated a garden-type apartment complex situated on several acres of land. The surrounding area was landscaped according to an architect's plan to conform it to the general design of the apartment complex. The expenditures for landscaping included the cost of top soil, seeding, clearing and grading, and planting of perennial shrubbery and ornamental trees around the perimeter of the tract of land and also immediately adjacent to the buildings. The replacement of such apartment buildings after the expiration of their useful lives will destroy the immediately adjacent landscaping, consisting of perennial shrubbery and ornamental trees.

Section 167 of the Internal Revenue Code of 1954 sets forth the general rule that there shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear, and obsolescence of property used in the trade or business, or of property held for the production of income.

Section 1.167 (a)-2 of the Income Tax Regulations provides, in part, that the depreciation allowance does not apply to land apart from the improvements or physical developments added to it, generally because land has no determinable useful life. Land preparation may be subject to the depreciation allowance, however, if it is closely associated with depreciable assets so that it is possible to establish a determinable period over which the preparation will be useful in a particular trade or business.

A useful life for land preparation is established if it will be replaced contemporaneously with a related depreciable asset. See Rev. Rul. 72-96, 1972-1 C.B. 66. Whether land preparation will be replaced contemporaneously with a related depreciable asset is necessarily a question of fact, but if the replacement of the asset will require the physical destruction of the land preparation, this test will be considered satisfied.

Accordingly, the landscaping consisting of the perennial shrubbery and ornamental trees immediately adjacent to the apartment buildings is depreciable property under section 167 of the Code since the replacement of the buildings will destroy this landscaping. The cost of this land preparation may therefore be recovered over the established useful life of the apartment buildings.

The balance of the landscaping, including the necessary clearing and general grading, top soil, seeding, finish grading, and planting of perennial shrubbery and ornamental trees around the perimeter of the tract of land, is general land improvement that will be unaffected by the replacement of the apartment buildings and, therefore, will not be replaced contemporaneously therewith. Accordingly, this land preparation is not depreciable property but rather is considered inextricably associated with the land. As such, the cost of this land preparation is added to taxpayer's basis in the land and is not depreciable.