

Notice of Proposed Rulemaking and Notice of Public Hearing

Definition of Structure

PS-39-93

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to deductions available upon demolition of a building. These proposed regulations reflect changes to the law made by the Tax Reform Act of 1984 and affect owners and lessees of real property who

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demolish buildings. This document also provides notice of a public hearing on these regulations.

DATES: Written comments, requests to appear and outlines of topics to be discussed at the public hearing scheduled for October 9, 1996, must be received by September 19, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (PS-39-93), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (PS-39-93), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Bernard P. Harvey, (202) 622-3110; concerning submissions and the hearing, Christina Vasquez, (202) 622-6803 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations under section 280B of the Internal Revenue Code. Section 280B was added by the Tax Reform Act of 1976, Public Law 94-455, 2124(b), 90 Stat. 1520, 1918 (Oct. 4, 1976), and significant amendments were made to the provision by the Economic Recovery Tax Act of 1981, Public Law 97-34, 212(d)(2)(C) and (e)(2), 95 Stat. 172, 239 (Aug. 13, 1981) (1981 Act) and the Tax Reform Act of 1984, Public Law 98-369, 1063, 98 Stat. 494, 1047 (July 18, 1984) (1984 Act). Transition rules were provided in the Tax Reform Act of 1986, Public Law 99-514, 1978(h), 100 Stat. 2085, 2904 (Oct. 22, 1986) (1986 Act). As originally enacted, section 280B required any costs or losses incurred on account of the demolition of any certified historic structure (a building or structure meeting certain requirements) to be capitalized into the land upon which the demolished structure was located. The 1981 Act modified the definition of certified historic structure for purposes of section 280B from a building or structure meeting certain requirements to a building (or its structural components) meeting certain requirements. The 1984 Act substituted "any structure" for "certified historic

structure." These proposed regulations define what "structure" means for purposes of section 280B.

Explanation of Provisions

These proposed regulations define the term "structure" for purposes of section 280B as a building and its structural components as those terms are defined in § 1.48-1(e) of the Income Tax Regulations. Thus, under section 280B, a structure will include only a building and its structural components and not other inherently permanent structures such as oil and gas storage tanks, blast furnaces, and coke ovens.

The proposed regulations rely on the legislative history underlying the 1984 and 1986 Acts, which refer repeatedly to buildings rather than to structures generally. In addition, the legislative history of the 1984 Act discusses the difficulty of applying the intent test of § 1.165-3 of the regulations, which applies to the demolition of buildings, and indicates that the newly added language is meant to eliminate this difficulty.

Proposed effective date

The regulations are proposed to be effective on and after the date that final regulations are filed with the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 9, 1996, in the Commissioner's Conference Room. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 18, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Bernard P. Harvey, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.280B-1 is added to read as follows:

§ 1.280B-1 Demolition of structures.

(a) *In general.* Section 280B provides that, in the case of the demolition of any structure, no deduction otherwise allowable under chapter 1 of subtitle A shall be allowed to the owner or lessee of such structure for any amount expended for the demolition or any loss sustained on account of the demolition, and that the expenditure or loss shall be treated as properly chargeable to the capital account with respect to the land on which the demolished structure was located.

(b) *Definition of structure.* For purposes of section 280B, the term *structure* means a building, as defined in § 1.48-1(e)(1), and the structural components of that building, as defined in § 1.48-1(e)(2).

(c) *Effective date.* This section applies with respect to demolitions occurring on or after the date that the final regulations are filed with the **Federal Register**.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on June 19, 1996, 8:45 a.m., and published in the issue of the Federal Register for June 20, 1996, 61 F.R. 31473)