

access to or use of the facility or vehicle by such class or classes.

[T.D. 7634, 44 FR 43270, July 24, 1979]

§ 1.190-3 Election to deduct architectural and transportation barrier removal expenses.

(a) *Manner of making election.* The election to deduct expenditures for removal of architectural and transportation barriers provided by section 190(a) shall be made by claiming the deduction as a separate item identified as such on the taxpayer's income tax return for the taxable year for which such election is to apply (or, in the case of a partnership, to the return of partnership income for such year). For the election to be valid, the return must be filed not later than the time prescribed by law for filing the return (including extensions thereof) for the taxable year for which the election is to apply.

(b) *Scope of election.* An election under section 190(a) shall apply to all expenditures described in § 1.190-2 (or in the case of a taxpayer whose architectural and transportation barrier removal expenses exceed \$25,000 for the taxable year, to the \$25,000 of such expenses with respect to which the deduction is claimed) paid or incurred during the taxable year for which made and shall be irrevocable after the date by which any such election must have been made.

(c) *Records to be kept.* In any case in which an election is made under section 190(a), the taxpayer shall have available, for the period prescribed by paragraph (e) of § 1.6001-1 of this chapter (Income Tax Regulations), records and documentation, including architectural plans and blueprints, contracts, and any building permits, of all the facts necessary to determine the amount of any deduction to which he is entitled by reason of the election, as well as the amount of any adjustment to basis made for expenditures in excess of the amount deductible under section 190.

[T.D. 7634, 44 FR 13273, July 24, 1979]

§ 1.193-1 Deduction for tertiary injectant expenses.

(a) *In general.* Subject to the limitations and restrictions of paragraphs (c) and (d) of this section, there shall be allowed as a deduction from gross income an amount equal to the qualified tertiary injectant expenses of the taxpayer. This deduction is allowed for the later of:

(1) The taxable year in which the injectant is injected, or

(2) The taxable year in which the expenses are paid or incurred.

(b) *Definitions—(1) Qualified tertiary injectant expenses.* Except as otherwise provided in this section, the term *qualified tertiary injectant expense* means any cost paid or incurred for any tertiary injectant which is used as part of a tertiary recovery method.

(2) *Tertiary recovery method.* *Tertiary recovery method* means:

(i) Any method which is described in subparagraphs (1) through (9) of section 212.78(c) of the June 1979 energy regulations (as defined by section 4996(b)(8)(C)),

(ii) Any method for which the taxpayer has obtained the approval of the Associate Chief Counsel (Technical), under section 4993(d)(1)(B) for purposes of Chapter 45 of the Internal Revenue Code,

(iii) Any method which is approved in the regulations under section 4993(d)(1)(B), or

(iv) Any other method to provide tertiary enhanced recovery for which the taxpayer obtains the approval of the Associate Chief Counsel (Technical) for purposes of section 193.

(c) *Special rules for hydrocarbons—(1) In general.* If an injectant contains more than an insignificant amount of recoverable hydrocarbons, the amount deductible under section 193 and paragraph (a) of this section shall be limited to the cost of the injectant reduced by the lesser of:

(i) The fair market value of the hydrocarbon component in the form in which it is recovered, or

(ii) The cost to the taxpayer of the hydrocarbon component of the injectant. Price levels at the time of injection are to be used in determining the fair market value of the recoverable hydrocarbons.

(2) *Presumption of recoverability.* Except to the extent that the taxpayer can demonstrate otherwise, all hydrocarbons shall be presumed recoverable and shall be presumed to have the same value on recovery that they would have if separated from the other components of the injectant before injection. Estimates based on generally accepted engineering practices may provide evidence of limitations on the amount or value of recoverable hydrocarbons.

(3) *Significant amount.* For purposes of section 193 and this section, an injectant contains more than an insignificant amount of recoverable hydrocarbons if the fair market value of the recoverable hydrocarbon component of the injectant, in the form in which it is recovered, equals or exceeds 25 percent of the cost of the injectant.

(4) *Hydrocarbon defined.* For purposes of section 193 and this section, the term *hydrocarbon* means all forms of natural gas and crude oil (which includes oil recovered from sources such as oil shale and condensate).

(5) *Injectant defined.* For purposes of applying this paragraph (c), an injectant is the substance or mixture of substances injected at a particular time. Substances injected at different times are not treated as components of a single injectant even if the injections are part of a single tertiary recovery process.

(d) *Application with other deductions.* No deduction shall be allowed under section 193 and this section for any expenditure:

(1) With respect to which the taxpayer has made an election under section 263(c) or

(2) With respect to which a deduction is allowed or allowable under any other provision of chapter 1 of the Code.

(e) *Examples.* The application of this section may be illustrated by the following examples:

Example 1. B, a calendar year taxpayer who uses the cash receipts and disbursements method of accounting, uses an approved tertiary recovery method for the enhanced recovery of crude oil from one of B's oil properties. During 1980, B pays \$100x for a tertiary injectant which contains 1,000y units of hydrocarbon; if separated from the other components of the injectant before injection, the hydrocarbons would have a fair market value of \$80x. B uses this injectant during

the recovery effort during 1981. B has not made any election under section 263(c) with respect to the expenditures for the injectant, and no section of chapter 1 of the Code other than section 193 allows a deduction for the expenditure. B is unable to demonstrate that the value of the injected hydrocarbons recovered during production will be less than \$80x. B's deduction under section 193 is limited to the excess of the cost for the injectant over the fair market value of the hydrocarbon component expected to be recovered ($\$100x - \$80x = \$20x$). B may claim the deduction only for 1981, the year of the injection.

Example 2. Assume the same facts as in *Example 1* except that through engineering studies B has shown that 700y units or 70 percent of the hydrocarbon injected is non-recoverable. The recoverable hydrocarbons have a fair market value of \$24x (30 percent of \$80x). The recoverable hydrocarbon portion of the injectant is 24 percent of the cost of the injectant ($\$24x$ divided by $\$100x$). The injectant does not contain a significant amount of recoverable hydrocarbons. B may claim a deduction for \$100x, the entire cost of the injectant.

Example 3. Assume the same facts as in *Example 1* except that through laboratory studies B has shown that because of chemical changes in the course of production the injected hydrocarbons that are recovered will have a fair market value of only \$40x. B may claim a deduction for \$60x, the excess of the cost of the injectant ($\$100x$) over the fair market value of the recoverable hydrocarbons ($\$40x$).

Example 4. B prepares an injectant from crude oil and certain non-hydrocarbon materials purchased by B. The total cost of the injectant to B is \$100x, of which \$24x is attributable to the crude oil. The fair market value of the crude oil used in the injectant is \$27x. B is unable to demonstrate that the value of the crude oil from the injectant that will be recovered is less than \$27x. The injectant contains more than an insignificant amount of recoverable hydrocarbons because the value of the recoverable crude oil ($\$27x$) exceeds \$25x (25 percent of \$100x, the cost of the injectant). Because the cost to B of the hydrocarbon component of the injectant ($\$24x$) is less than the fair market value of the hydrocarbon component in the form in which it is recovered ($\$27x$), the cost rather than the value is taken into account in the adjustment required under paragraph (c)(1) of this section. B's deduction under section 193 is limited to the excess of the cost of the injectant over the cost of the hydrocarbon component ($\$100x - \$24x = \$76x$).

(Secs. 193 and 7805, Internal Revenue Code of 1954, 94 Stat. 286, 26 U.S.C. 193; 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 7980, 49 FR 39052, Oct. 3, 1984]