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Depreciating Farm Drainage Tile

-by Neil E. Harl*

Rapidly rising farmland values in recent years¹ have brought an intense focus to the allocation of the purchase price in the event of a sale or taxable exchange as among the land itself, tile lines, fences and other improvements. It is clear that an appropriate allocation can (and should) be made to the depreciable (and non-depreciable) components of the transaction, based on relative fair market values.²

Allocation of income tax basis

The cost, in a purchase or taxable exchange, is to be allocated to each item purchased in proportion to its fair market value at the time of the acquisition.³ The basis for depreciation cannot exceed an amount which bears the same proportion to the lump sum as the value of depreciable property at the time of acquisition bears to the entire value of the property at that time.⁴

For multiple asset acquisitions on or after February 14, 1997, involving "assets which constitute a trade or business," for purposes of determining the transferee's basis in the assets and the gain or loss of the transferor, the consideration received is to be allocated among the acquired assets in a prescribed manner.⁵ The basis is allocated, in order, to –

- (1) Cash and cash-like items;
- (2) Certificates of deposit, government securities and other marketable stock or securities;
- (3) Other tangible and intangible assets not in class (1), (2) and (4);
- (4) All "Section 197 intangibles" except for goodwill and going concern value; and
- (5) Good will and going concern value, in proportion to relative fair market values.⁶

On purchase of farmland, which usually involves a multiple asset acquisition (soil, tile lines, fences and other improvements), even if the purchase is considered a "trade or business,"⁷ the asset allocation rules do not alter the way income tax basis is allocated in most situations. Very few involve cash or cash-like items or intangible assets and only those with a unique product such as foundation seed stock producers have goodwill or going concern value. That leaves the basis to be allocated among the tangible assets in accordance with fair market values.⁸

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Note that if “. . . the transferor and transferee agree in writing as to the allocation of consideration, or as to the fair market value of any of the assets, such agreements shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.”⁹

So what is “fair market value” for installed tile lines?

The first task is to ascertain how much tile is involved which has been installed on the land in question. Tile maps, acquired from the previous land owner or the tile installer, are the best source of information as to the *location* of the tile and possibly for the *size* of tile for both mains and laterals. Depreciation schedules maintained since installation of the tile are also a good source of information about the cost of the tile as well as, in some instances, the amount of tile installed. Aerial photographs taken following a heavy rain early in the year when vegetation is sparse or non-existent often reveal the location of mains and laterals. Statements from the prior owner (or owners) and from others who are knowledgeable can also support the conclusion as to the amount and location of the tile and, in some instances, the size of the tile lines.

With respect to determining fair market value, replacement cost (which properly includes the cost of the tile and the cost of installation) is often used as the starting point. That cost figure *must be discounted to reflect the age of the tile, the size of the tile, the material used to manufacture the tile and the condition of the tile field*. Note that the resulting figure may not necessarily coincide with the undepreciated (or adjusted) basis of the tile in the hands of the transferor of the farmland. The fair market value of the installed tile is ultimately *a question of fact to be determined based on all of the facts and circumstances relevant to the tile in question*.

The 2006 *Farmers’ Audit Technique Guide*¹⁰ suggests checking the property tax statements for the ratio between the land and the improvements. As the ATG states, “if the statement shows that land is 40% of total property value, then you know that 40% is not depreciable.”¹¹ An earlier Audit Technique Guide suggested that, in general and in the absence of other evidence, tile should approximate five percent of the cost of the unimproved land. That is obviously a rough approximation and does not reflect the age, condition, size or type of tile. The better approach (and the more defensible) is to develop a valuation based on the factors relevant to the tile in question.

Depreciable allowed (or allowable)

Farm drainage tile is depreciable as 15-year property (ADR midpoint lives of 20-years or more and less than 25 years)¹² and can be depreciated at a rate up to 150 percent declining balance.¹³

Tile lines are eligible for Section 179 depreciation whether the tile is new or used¹⁴ if “acquired by purchase for use in the active conduct of a trade or business.”¹⁵ Thus, property rented under a cash rent lease is generally considered ineligible for Section 179 depreciation.¹⁶

Tile lines, as 15-year property, are also eligible for so-called “bonus” depreciation¹⁷ as “depreciable property” if the original

use of the property begins with the taxpayer (new property)¹⁸ and the property is to be used in a “trade or business” or “held for the production of income.”¹⁹ Thus, newly installed tile should be eligible if installed by a cash rent land owner, share-rent landowner or a farm owner-operator.

ENDNOTES

¹ See, e.g., Duffy, “Iowa Farmland Values,” Iowa State University, December, 2011 (average 32.5 percentage increase for Iowa farmland values reported in late 2011); <http://www.extension.iastate.edu/topic/landvalue>.

² See Treas. Reg. § 1.167(a)-5. See generally 4 Harl, *Agricultural Law* § 29.04[2] (2011); Harl, *Agricultural Law Manual* § 4.03[4][g][ii] (2011); 1 Harl, *Farm Income Tax Manual* § 3.20[4][i][A][III] (2011 ed).

³ Treas. Reg. § 1.167(a)-5. See *Weiss v. Comm’r*, 94 T.C. 28 (1990) (limited partnership purchased several parcels of farmland, some with depreciable improvements and others without improvements; cost basis of depreciable assets from purchase price determined based on ratio of value of assets to value of all assets; because purchase price contained unstated interest, purchase price was to be first reduced by unstated interest). See also *Wyatt v. Comm’r*, T.C. Memo. 1991-621 (allocation of purchase price to land and avocado trees based on sales of land with comparable residential development potential where the purchase price was influenced by land’s residential development potential).

⁴ Treas. Reg. § 1.167(a)-5.

⁵ I.R.C. §§ 1060(a), 338(b)(5). See Temp. Treas. Reg. § 1.338(b)-2T.

⁶ See Treas. Reg. § 1.197-2.

⁷ It is unclear whether a transaction involving the sale of farmland by a retired farmer who has been cash renting the land to a purchaser who intends to be carrying on the trade or business of farming falls within I.R.C. § 1060(c)(1).

⁸ See 4 Harl, note 2 *supra*, § 29.04[2][a].

⁹ I.R.C. § 1060(a)(2).

¹⁰ IRPO ¶ 204,575.

¹¹ *Id.*

¹² I.R.C. §§ 168(e)(1), 168(e)(3)(E). See Rev. Proc. 87-56, 1987-2 C.B. 674, Asset Class 00.3 (drainage facilities).

¹³ I.R.C. § 168(b)(2)(A).

¹⁴ I.R.C. § 1245(a)(3)(B). Cf. Rev. Rul. 66-89, 1966-1 C.B. 7 (tile lines eligible for investment credit as I.R.C. § 38 property; the term “section 1245 property” was substituted for “Section 38 property” in the Revenue Reconciliation Act of 1990, Pub. L. No. 101-508, § 11801. 104 Stat. 1388-1 (1990).

¹⁵ I.R.C. § 179(d)(1)(C).

¹⁶ *Id.* Cash rented assets are not usually “acquired by purchase for use in the active conduct of a trade or business”).

¹⁷ I.R.C. § 168(k)(2)(A)(i)(I) (recovery period of 20-years or less).

¹⁸ I.R.C. § 168(a)(2)(A)(ii).

¹⁹ I.R.C. § 167(a).