

levies, if the purpose of such treatment or moving of earth is to protect, level, contour, terrace, or condition the land so as to permit its use as farming land; and

(iii) The diversion of streams and watercourses, including the construction of nondepreciable drainage facilities, provided that the purpose is to remove or divert water from the land so as to make it available for use in farming.

(2) The following are examples of land clearing activities:

(i) The cutting of trees, the blasting of the resulting stumps, and the burning of the residual undergrowth;

(ii) The leveling of land so as to permit irrigation or planting;

(iii) The removal of salt or other minerals which might inhibit cultivation of the soil;

(iv) The draining and filling in of a swamp or marsh; and

(v) The diversion of a stream from one watercourse to another.

(b) *Expenditures not allowed as a deduction under section 182.* (1) Section 182 applies only to expenditures for nondepreciable items. Accordingly, a taxpayer may not deduct expenditures for the purchase, construction, installation, or improvement of structures, appliances, or facilities which are of a character which is subject to the allowance for depreciation under section 167 and the regulations thereunder. Expenditures in respect of such depreciable property include those for materials, supplies, wages, fuel, freight, and the moving of earth, paid or incurred with respect to tanks, reservoirs, pipes, conduits, canals, dams, wells, or pumps constructed of masonry, concrete, tile, metal, wood, or other nonearthen material.

(2) Expenditures which are deductible without regard to section 182 are not deductible under section 182. Thus, such expenditures are deductible without being subject to the limitations imposed by section 182(b) and § 1.182-5. For example, section 182 does not apply to the ordinary and necessary expenses incurred in the business of farming which are deductible under section 162 even though they might otherwise be considered to be clearing of land expenditures. Section 182 also does not apply to interest (deductible under sec-

tion 163) nor to taxes (deductible under section 164). Similarly, section 182 does not apply to any expenditures (whether or not currently deductible) paid or incurred for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming, within the meaning of section 175 and the regulations thereunder, nor to expenditures deductible under section 180 and the regulations thereunder, relating to expenditures for fertilizer, etc.

(c) *Depreciation.* In addition to expenditures for the activities described in paragraph (a) of this section, there also shall be treated as an expenditure to which section 182 applies a reasonable allowance for depreciation not otherwise deductible on property of the taxpayer which is used in the clearing of land for the purpose of making such land suitable for use in farming, provided the property is property which, if used in a trade or business, would be subject to the allowance for depreciation under section 167. Depreciation allowable as a deduction under section 182 is limited to the portion of depreciation which is attributable to the use of the property in the clearing of land. The depreciation shall be computed in accordance with section 167 and the regulations thereunder. To the extent an amount representing a reasonable allowance for depreciation with respect to property used in clearing land is treated as an expenditure to which section 182 applies, such depreciation shall, for purposes of chapter 1 of the Code, be treated as an amount allowed under section 167 for depreciation. Thus, if a deduction is allowed for depreciation under section 182 in respect of property used in clearing land, proper adjustment to the basis of the property so used shall be made under section 1016(a).

[T.D. 6794, 30 FR 791, Jan. 26, 1965]

§ 1.182-4 Definition of “land suitable for use in farming”, etc.

For purposes of section 182, the term *land suitable for use in farming* means land which, as a result of the land clearing activities described in paragraph (a) of § 1.182-3, could be used by

the taxpayer or his tenant for the production of crops, fruits, or other agricultural products, including fish, or for the sustenance of livestock. The term *livestock* includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive fur-bearing animals, chickens, turkeys, pigeons, and other poultry. Land used for the sustenance of livestock includes land used for grazing such livestock. Expenditures are considered to be for the purpose of making land suitable for use in farming by the taxpayer or his tenant only if made to prepare the land which is cleared for use by the taxpayer or his tenant in farming. Thus, if the taxpayer pays or incurs expenditures to clear land for the purpose of sale (whether or not for use in farming by the purchaser) or to be held by the taxpayer or his tenant other than for use in farming, section 182 does not apply to such expenditures. Whether the land is cleared for the purpose of making it suitable for use in farming by the taxpayer or his tenant, is a question of fact which must be resolved on the basis of all the relevant facts and circumstances. For purposes of section 182, it is not necessary that the land cleared actually be used in farming following the clearing activities. However, the fact that following the clearing operation, the land is used by the taxpayer or his tenant in the business of farming will, in most cases, constitute evidence that the purpose of the clearing was to make land suitable for use in farming by the taxpayer or his tenant. On the other hand, if the land cleared is sold or converted to nonfarming use soon after the taxpayer has completed his clearing activities, there will be a presumption that the expenditures were not made for the purpose of making the land suitable for use in farming by the taxpayer or his tenant. Other factors which will be considered in determining the taxpayer's purpose for clearing the land are, for example, the acreage, location, and character of the land cleared, the nature of the taxpayer's farming operation, and the use to which adjoining or nearby land is put.

[T.D. 6794, 30 FR 791, Jan. 26, 1965]

§ 1.182-5 Limitation.

(a) *Limitation*—(1) *General rule*. The amount of land clearing expenditures which the taxpayer may deduct under section 182 in any one taxable year is limited to the lesser of \$5,000 or 25 percent of his "taxable income derived from farming". Expenditures in excess of the applicable limitation are to be charged to the capital account and constitute additions to the taxpayer's basis in the land.

(2) *Definition of "taxable income derived from farming"*. For purposes of section 182, the term *taxable income derived from farming* means the gross income derived from the business of farming reduced by the deductions attributable to such gross income. Gross income derived from the business of farming is the gross income of the taxpayer derived from the production of crops, fruits, or other agricultural products, including fish, or from livestock (including livestock held for draft, breeding or dairy purposes). It does not include gains from sales of assets such as farm machinery or gains from the disposition of land. The deductions attributable to the business of farming are all the deductions allowed by Chapter 1 of the Code (other than the deduction allowed by section 182) for expenditures or charges (including depreciation and amortization) paid or incurred in connection with the production or raising of crops, fruits, or other agricultural products, including fish, or livestock. However, the deduction under section 1202 (relating to the capital gains deduction) attributable to gain on the sale or other disposition of assets (other than draft, breeding, or dairy stock), and the net operating loss deduction (computed under section 172) shall not be taken into account in computing "taxable income derived from farming." Similarly, deductible losses on the sale, disposition, destruction, condemnation, or abandonment of assets (other than draft, breeding, or dairy stock) shall not be considered as deductions attributable to the business of farming. A taxpayer shall compute his gross income from farming in accordance with his accounting method used in determining gross income. (See