the capital account for additions or improvements after the amortization period has begun. However, nothing contained in this section or §1.187–1 shall be deemed to disallow a deduction for depreciation for such capital additions. Thus, for example, if a taxpayer places a piece of certified coal mine safety equipment in service in 1971 and in 1972 makes improvements to it the expenditures for which are chargeable to the capital account, such improvements shall not increase the adjusted basis of the equipment for purposes of computing the amortization deduction allowed by section 187(a). However, the depreciation deduction provided by section 167 shall be allowed with respect to such improvements in accordance with the principles of section 167.

[T.D. 7137, 36 FR 14734, Aug. 11, 1971; 36 FR 19251, Oct. 1, 1971]

§ 1.188–1 Amortization of certain expenditures for qualified on-the-job training and child care facilities.

(a) *Allowance of deduction*—(1) *In general.* Under section 188, at the election of the taxpayer, any eligible expenditure (as defined in paragraph (d)(1) of this section) made by such taxpayer to acquire, construct, reconstruct, or rehabilitate section 188 property (as defined in paragraph (d)(2) of this section) shall be allowable as a deduction ratably over a period of 60 months. Such 60-month period shall begin with the month in which such property is placed in service. For rules for making the election, see paragraph (b) of this section. For rules relating to the termination of an election, see paragraph (c) of this section.

(2) *Amount of deduction*—(i) *In general.* For each eligible expenditure attributable to an item of section 188 property the amortization deduction shall be an amount, with respect to each month of the 60-month amortization period which falls within the taxable year, equal to the elgible expenditure divided by 60. The total amortization deduction with respect to each item of section 188 property for a particular taxable year is the sum of the amortization deductions allowable for each month of the 60-month period which falls within such taxable year. The total amortization deduction under section 188 for a particular taxable year is the sum of the amortization deductions allowable with respect to each item of section 188 property for that taxable year.

(ii) *Separate amortization period for each expenditure.* Each eligible expenditure attributable to an item of section 188 property to which an election relates shall be amortized over a 60-month period beginning with the month in which the item of section 188 property is placed in service. Thus, if a taxpayer makes an eligible expenditure for an addition to, or improvement of, section 188 property, such expenditure must be amortized over a separate 60-month period beginning with the month in which the section 188 property is placed in service.

(iii) *Separate items.* The determination of what constitutes a separate item of section 188 property is to be made on the basis of the facts and circumstances of each individual case. Additions or improvements to an existing item of section 188 property are treated as a separate item of section 188 property. In general, each item of personal property is a separate item of property and each building, or separate element or structural component thereof, is a separate item of property. For purposes of subdivisions (i) and (ii) of this subparagraph, two or more items of property may be treated as a single item of property if such items (A) are placed in service within the same month of the taxable year, (B) have same estimated useful life, and (C) are to be used in a functionally related manner in the operation of a qualified on-the-job training or child care facility or are integrally related facilities (described in paragraph (d) (3) or (4) of this section.

(iv) *Disposition of property or termination of election.* If an item of section 188 property is sold or exchanged or otherwise disposed of (or if the item of property ceases to be used as section 188 property by the taxpayer) during a particular month, then the amortization deduction (if any) allowable to the taxpayer in respect of that item for that month shall be an amount which bears the same ratio to the amount to which the taxpayer would be entitled for a full month as the number of days

in such month during which the property was held by him (or used by him as section 188 property) bears to the total number of days in such month.

(3) *Effect on other deductions.* The amortization deduction provided by section 188(a) with respect to any month shall be in lieu of any depreciation deduction which would otherwise be allowable under sections 167 or 179 with respect to that portion of the adjusted basis of the property attributable to an adjustment under section 1016(a)(1) made on account of an eligible expenditure.

(4) *Depreciation with respect to property ceasing to be used as section 188 property.* A taxpayer is entitled to a deduction for the depreciation (to the extent allowable under section 167) of property with respect to which the election under section 188 is terminated under the provisions of paragraph (c) of this section. The deduction for depreciation shall begin with the date of such termination and shall be computed on the adjusted basis of the property as of such date. The depreciation deduction shall be based upon the estimated remaining useful life and salvage value authorized under section 167 for the property as of the termination date.

(5) *Investment credit not to be allowed.* Any property with respect to which an election has been made under section 188(a) shall not be treated as section 38 property within the meaning of section 48(a).

(6) *Special rules*—(i) *Life estates.* In the case of section 188 property held by one person for life with the remainder to another person, the amortization deduction under section 188(a) shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant during his life.

(ii) *Certain corporate acquistions.* If the assets of a corporation which has elected to take the amortization deduction under section 188(a) are acquired by another corporation in a transaction to which section 381(a) (relating to carryovers in certain corporate acquisitions) applies, the acquiring corporation is to be treated as if it were the distributor or transferor corporation for purposes of this section.

(iii) *Estates and trusts.* For the allowance of the amortization deduction in the case of estates and trusts, see section 642(f) and §1.642(f)–(1).

(iv) *Partnerships.* For the allowance of the amortization deduction in the case of partnerships, see section 703 and §1.703–1.

(b) *Time and manner of making election*—(1) *In general.* Except as otherwise provided in subparagraph (2) of this paragraph, an election to amortize an eligible expenditure under section 188 shall be made by attaching, to the taxpayer's income tax return for the taxable period for which the deduction is first allowable to such taxpayer, a written statement containing:

(i) A description clearly identifying each item of property (or two or more items of property treated as a single item) forming a part of a qualified on-the-job training or child care facility to which the election relates. e.g., building, classroom equipment, etc.;

(ii) The date on which the eligible expenditure was made for such item of property (or the period during which eligible expenditures were made for two or more items of property treated as a single item of property);

(iii) The date on which such item of property was ''placed in service'' (see paragraph (d)(5) of this section);

(iv) The amount of the eligible expenditure of such item of property (or the total amount of expenditures for two or more items of property treated as a single item); and

(v) The annual amortization deduction claimed with respect to such item of property.

If the taxpayer does not file a timely return (taking into account extensions of the time for filing) for the taxable year for which the election is first to be made, the election shall be filed at the time the taxpayer files his first return for that year. The election may be made with an amended return only if such amended return is filed no later than the time prescribed by law (including extensions thereof) for filing the return for the taxable year of election.

(2) *Special rule.* With respect to any return filed before (90 days after the

date on which final regulations are filed with the Office of the Federal Register), the election to amortize an eligible expenditure for section 188 property shall be made by a statement on, or attached to, the income tax return (or an amended return) for the taxable year, indicating that an election is being made under section 188 and setting forth information to identify the election and the facility or facilities to which it applies. An election made under the provisions of this subparagraph, must be made not later than (i) the time, including extensions thereof, prescribed by law for filing the income tax return for the first taxable year for which the election is being made or (ii) before (90 days after the date on which final regulations under section 188 are filed with the Office of the Federal Register), whichever is later. Nothing in this subparagraph shall be construed as extending the time specified in section 6511 within which a claim for credit or refund may be filed.

(3) *No other method of making election.* No method for making the election under section 188(a) other than the method prescribed in this paragraph shall be permitted. If an election to amortize section 188 property is not made within the time and in the manner prescribed in this paragraph, no election may be made (by the filing of an amended return or in any other manner) with respect to such section 188 property.

(4) *Effect of election.* An election once made may not be revoked by a taxpayer with respect to any item of section 188 property to which the election relates. The election of the amortization deducted for an item of section 188 property shall not affect the taxpayer's right to elect or not to elect the amortization deduction as to other items of section 188 property even though the items are part of the same facility. For rules relating to the termination of an election other than by revocation by the taxpayer, see paragraph (c) of this section.

(c) *Termination of election.* If the specific use of an item of section 188 property in connection with a qualified on-the-job training or child care facility is discontinued, the election made with respect to that item of property shall be terminated. The termination shall be effective with respect to such item of property as of the earliest date on which the taxpayer's specific use of the item is no longer in connection with the operation of a qualified on-the-job training or child care facility. If a facility ceases to meet the applicable requirements of paragraph (d)(3) of this section, relating to qualified on-the-job training facilities, or paragraph (d)(4) of this section, relating to qualified child care facilities, the election or elections made with respect to the items of section 188 property comprising such facility shall be terminated. The termination shall be effective with respect to such items of poperty as of the earliest date on which the facility is no longer qualified under the applicable rules. For rules relating to depreciation with respect to property ceasing to be used as section 188 property, see paragraph (a)(4) of this section.

(d) *Definitions and special requirements*—(1) *Eligible expenditure.* For purposes of this section, the term *eligible expenditure* means an expenditure:

(i) Chargeable to capital account;

(ii) Made after December 31, 1971, and before January 1, 1982, to acquire, construct, reconstruct, or rehabilitate section 188 property which is a qualified child care center facility (or, made after December 31, 1971, and before January 1, 1977, to acquire, construct, reconstruct, or rehabilitate section 188 property which is a qualified on-the-job training facility); and

(iii) For which, but only to the extent that, a grant or other reimbursement excludable from gross income is not, directly or indirectly, payable to, or for the benefit of, the taxpayer with respect to such expenditure under any job training or child care program established or funded by the United States, a State, or any instrumentality of the foregoing, or the District of Columbia.

For purposes of this subparagraph, an expenditure is considered to be made when actually paid by a taxpayer who computes his taxable income under the cash receipts and disbursements method or when the obligation therefore is incurred by a taxpayer who computes

his taxable income under the accrual method. See subparagraph (5) of this paragraph for the determination of when section 188 property is placed in service for purposes of beginning the 60-month amortization period.

(2) *Section 188 property.* Section 188 property is tangible property which is:

(i) Of a character subject to depreciation;

(ii) Located within the United States; and

(iii) Specifically used as an integral part of a qualified on-the-job training facility (as defined in subparagraph (3) of this paragraph) or as an integral part of a qualified child care center facility (as defined in subparagraph (4) of this paragraph.)

(3) *Qualified on-the-job training facility.* A *qualified on-the-job training facility* is a facility specifically used by an employer as an on-the-job training facility in connection with an occupational training program for his employees or prospective employees provided that with respect to such program:

(i) All of the following requirements are met:

(A) There is offered at the training facility a systematic program comprised of work and training and related instruction;

(B) The occupation, together with a listing of its basic skills, and the estimated schedule of time for accomplishments of such skills, are clearly identified;

(C) The content of the training is adequate to qualify the employee, or prospective employee, for the occupation for which the individual is being trained;

(D) The skills are to be imparted by competent instructors;

(E) Upon completion of the training, placement is to be based primarily upon the skills learned through the training program;

(F) The period of training is not less than the time necessary to acquire minimum job skills nor longer than the usual period of training for the same occupation; and

(G) There is reasonable certainty that employment will be available with the employer in the occupation for which the training is provided; or

(ii) The employer has entered into an agreement with the United States, or a State agency, under the provisions of the Manpower Development and Training Act of 1962, as amended and supplemented (42 U.S.C. 2571 *et seq.*), the Economic Opportunity Act of 1964, as amended and supplemented (42 U.S.C. 2701 *et seq.*), section 432(b)(1) of the Social Security Act, as amended and supplemented (42 U.S.C. 632(b)(1)), the National Apprenticeship Act of 1937, as amended and supplemented (29 U.S.C. 50 *et seq.*), or other similar Federal statute.

A *facility* consists of a building or any portion of a building and its structural components in which training is conducted, and equipment or other personal property necessary to teach a trainee the basic skills required for satisfactory performance in the occupation for which the training is being given. A facility also includes a building or portion of a building which provides essential services for trainees during the course of the training program, such as a dormitory or dining hall. For purposes of this section, a facility is considered to be specifically used as an on-the-job training facility if such facility is actually used for such purposes and is not used in a significant manner for any purpose other than job training or the furnishing of essential services for trainees such as meals and lodging. For purposes of the preceding sentence if a facility is used 20 percent of the time for a purpose other than on-the-job training or providing trainees with essential services, it would not satisfy the significant use test. Thus, a production facility is not an on-the-job training facility for purposes of section 188 simply because new employees receive training on the machines they will be using as fully productive employees. A facility is considered to be used by an employer in connection with an occupational training program for his employees or prospective employees if at least 80 percent of the trainees participating in the program are employees or prospective employees. For purposes of this section, a prospective employee is a trainee with

respect to whom it is reasonably expected that the trainee will be employed by the employer upon successful completion of the training program.

(4) *Qualified child care facility.* A *qualified child care facility* is a facility which is:

(i) Particulary suited to provide child care services and specifically used by an employer to provide such services primarily for his employees' children;

(ii) Operated as a licensed or approved facility under applicable local law, if any, relating to the day care of children; and

(iii) If directly or indirectly funded to any extent by the United States, established and operated in compliance with the requirements contained in Part 71 of title 45 of the Code of Federal Regulations, relating to Federal Interagency Day Care Requirements. For purposes of this subparagraph, a *facility* consists of the buildings, or portions or structural components thereof, in which children receive such personal care protection, and supervision in the absence of their parents as may be required to meet their needs, and the equipment or other personal property necessary to render such services. Whether or not a facility, or any component property thereof, is particularly suited for the needs of the children being cared for depends upon the facts and circumstances of each individual case. Generally, a building and its structural component, or a room therein, and equipment are particulary suitable for furnishing child care service if they are designed or adapted for such use or satisfy requirements under local law for such use as a condition to granting a license for the operation of the facility. For example, such property includes special kitchen or toilet facilities connected to the building or room in which the services are rendered and equipment such as children's desks, chairs, and play or instructional equipment. Such property would not include general purpose rooms used for many purposes (for example, a room used as an employee recreation center during the evening) nor would it include a room or a part of a room which is simply screened off for use by children during the day. For purposes of this section, a facility is considered to be specifically used as a child care facility if such facility is actually used for such purpose and is not used in a significant manner for any purpose other than child care. For purposes of this subparagraph, a child care facility is used by an employer to provide child care services primarily for children of employees of the employer if, for any month, no more than 20 percent of the average daily enrolled or attending children for such month are other than children of such employees.

(5) *Placed in service.* For purposes of section 188 and this section, the term *placed in service* shall have the meaning assigned to such term in paragraph (d) of §1.46–3.

(6) *Employees.* For purposes of section 188 and this section, the terms *employees* and *prospective employees* include employees and prospective employees of a member of a controlled group of corporations (within the meaning of section 1563) of which the taxpayer is a member.

(e) *Effective date.* The provisions of section 188 and this section apply to taxable years ending after December 31, 1971.

[T.D. 7599, 44 FR 14549, Mar. 13, 1979]

§1.190–1 Expenditures to remove architectural and transportation barriers to the handicapped and elderly.

(a) *In general.* Under section 190 of the Internal Revenue Code of 1954, a taxpayer may elect, in the manner provided in §1.190–3 of this chapter, to deduct certain amounts paid or incurred by him in any taxable year beginning after December 31, 1976, and before January 1, 1980, for qualified architectural and transportation barrier removal expenses (as defined in §1.190–2(b) of this chapter). In the case of a partnership, the election shall be made by the partnership. The election applies to expenditures paid or incurred during the taxable year which (but for the election) are chargeable to capital account.

(b) *Limitation.* The maximum deduction for a taxpayer (including an affiliated group of corporations filing a consolidated return) for any taxable year is $25,000. The $25,000 limitation applies to a partnership and to each partner.