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**Tax Committee Comments and Recommendations, No.  
10:Comments on Proposed Rule Making Under Section 1238 the  
Internal Revenue Code of 1954 Relating to Proposed Gain  
Attributable to Amortization Deduction, Submitted to the IRS -  
March 5, 1965**

American Institute of Certified Public Accountants. Committee on Federal Taxation

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TAX COMMITTEE COMMENTS AND RECOMMENDATIONS

Comments on Proposed Rule Making Under Section 1238  
of the Internal Revenue Code of 1954 Relating to  
Proposed Gain Attributable to Amortization Deduction

Submitted to the IRS - March 5, 1965

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COMMITTEE ON FEDERAL TAXATION

of the

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Comments on Proposed Rule Making Under Section 1238  
of the Internal Revenue Code of 1954 Relating to  
Proposed Gain Attributable to Amortization Deduction

General Comment

The proposed amendment to the existing regulations seeks to obtain by regulation what has not been obtained by legislation. Although the effect of Sections 1245 and 1250 will minimize the importance of this question with respect to dispositions of depreciable property in years to which these sections relate, it is still an important question with respect to prior years.

In view of the very valid arguments which have been advanced against the arbitrary position taken by the Internal Revenue Service (for example, by the Tax Court, in the case of Macabe Company, Inc. 42 T.C. No. 87, 1964), this proposed amendment is unwarranted at the present time.

Specific Comments

Section

1.

Introduction  
to Proposed  
Amendment

Reference is made to "longstanding principles which are stated in Revenue Ruling 62-92, C.B. 1962-1, 29." In tax history, however, a 1962 ruling could hardly be considered of long standing.

2

1 1238-1(a)

The regulation as proposed is an unwarranted attempt to give further stature to the Cohn rule.

The question of depreciation in the year of sale is far from settled in the courts. A review of tax cases shows that the allowance for depreciation in the year of

sale depends on the interpretation of the term "salvage value": in fact, this was a crucial issue in the case of Macabe Company, Inc., supra. If salvage value is to be equated with "sales price" then the Commissioner should prevail. But on the contrary, the court held that "... where depreciable ... property is unexpectedly disposed of substantially prior to the expiration of its estimated useful life, the actual sales price received therefor bears little, if any, relevance to the salvage value of the property."

3.

1.1238-1(a)  
Example 1

It is proposed that current years be substituted for 1954, 1955 and 1956 since retroactive application is objectionable.

There is no clear authority (under the Cohn rule) for the Internal Revenue Service proposal to apply its interpretation retroactively to taxable years under Regulations 111 and 118 under the 1939 Code. Such retroactive application is objectionable, particularly since the issue is likely to continue in litigation in view of the conflicts among court decisions.