

“cost segregation” study and were entitled to claim some ITC that they did not claim on the original return. The Petitioner owns and leases the property to a [Redacted]. One of the members of [Redacted] is also the owner of the dealership. The Petitioner hired an appraiser to make the cost segregation study. The study separated the lighting in and around the building from the employee parking area. The lights around the building are used for the customer parking and to display the [Redacted] that are for sale. The lights are attached to concrete bases by bolts. The cost study separated the poles from the bases and the Petitioner is only claiming ITC on the light poles.

LAW AND ANALYSIS

The Idaho Investment Tax Credit is allowed under Idaho Code section 63-3029B Income Tax Credit for Capital Investment. During the audit period, Idaho Code section 63-3029B allowed a credit of 3 percent of the taxpayer’s qualified investments made during the taxable year. Except for a motor vehicle under eight thousand (8,000) pounds gross weight, a qualified investment is an acquisition of depreciable property that is eligible for the [Redacted] ITC as defined in sections 46(c) and 48 of the Internal Revenue Code, as in effect before November 1990.

Internal Revenue Code section 48(a) defines the “section 38 property” that was eligible for the [Redacted] ITC as tangible personal property. It also allows credit for other tangible property, not including a building or its structural components, if it is used in certain industries that are not relevant here. Thus, under [Redacted] ITC rules that are incorporated by reference in Idaho Code section 63-3029B, real property is ineligible for both [Redacted] and Idaho ITC.

Paragraph (3) says “As used in this section “qualified investment” means certain property which:(a) (i) Is eligible for the federal investment tax credit, as defined in sections 46(c) and 48 of the Internal Revenue Code subject to the limitations provided for certain regulated companies in section 46(f) of the Internal Revenue

Code and is not a motor vehicle under eight thousand (8,000) pounds gross weight...”

We look to the IRC section to determine whether these lights qualify.

IRC section 48 (A) tangible personal property, (other than an air conditioning or heating unit), or ...

The Tax Court, in the Whiteco Industries, Inc.¹ case said.

“The statute contains no definition of the term ‘tangible personal property,’ but committee reports relating to the enactment of the investment credit do contain many statements which are helpful in understanding the types of property intended to be included within the term. The Income Tax Regulations also contain many relevant guidelines. The technical explanations attached *671 to the House and Senate committee reports provide that the term ‘tangible personal property’ for purposes of section 48: includes any tangible property except land, and improvements thereto, such as buildings or other inherently permanent structures thereon (including items which are structural components of such buildings or structures.”

Based on the first paragraph of section 48, the removable portion of the light poles qualify as tangible personal property.

The NODD points to Treasury Regulation 1.48-1(d)(4) in the middle of the paragraph beginning “property such as pavements, parking areas...” However, the first sentence of that paragraph says “*Integral part.* In order to qualify for the credit, property (other than tangible personal property and research or storage facilities used in connection with any of the activities specified in subparagraph (1) of this paragraph) must be used as an integral part of one or more of the activities specified in subparagraph (1) of this paragraph.” Underline added.

The test of being an integral part is only applied if the property is not tangible personal property.

The Petitioner is making the argument that these meet the definition of “Special

Lighting”, as referred to in the Senate Finance Committee Report².

Tangible personal property already eligible for credit includes special lighting (including lighting to illuminate exterior of building or store, but not lighting to illuminate parking areas), false balconies and other exterior ornamentation that have no more than incidental relationship to operation or maintenance of building, and identity symbols that identify or relate to particular retail establishment or restaurant such as special materials attached to exterior or interior of building or store and signs (other than billboards). Similarly, floor coverings which are not integral part of floor itself such as floor tile generally installed in manner to be readily removed (that is it is not cemented, mudded, or otherwise permanently affixed to the building floor but, instead, has adhesives applied which are designed to ease its removal), carpeting, wall panel inserts such as those designed to contain condiments or to serve as framing for pictures of products of retail establishment, beverage bars, ornamental fixtures (such as coats-of-arms), artifacts (if depreciable), booths for seating, movable and removable partitions, and large and small pictures of scenery, persons, and like which are attached to walls or suspended from ceiling, are considered tangible personal property and not structural components. Consequently, under existing law, this property is already eligible for credit. Underline added.

In Whiteco Industries, Inc. v. Commissioner³ and Standard Oil Corp v. US⁴, and Standard Oil Co. Indiana v. Commissioner, the United States Tax Court dealt with some lighting and advertising signs. The Commission previously relied on these cases in Docket No. 21032, issued in 2009. The property in question in this case is similar in the manner that it is attached and the difficulty in removing it.

The Whiteco case developed six questions that the Tax Court used to determine whether property qualified for the ITC, prior to the repeal of the [Redacted] credit. These six questions have also been used by the Tax Court in subsequent³ cases to distinguish building components and land improvements from tangible personal property.

1. Is the property capable of being moved, and has it, in fact, been moved?

¹ Whiteco Industries Inc. v. Commissioner of Internal Revenue, 65 T.C. 664 (1975)

² Senate report dated September 28, 1978 to accompany HR 13511.

³ 65-TC-664.

⁴ 77-TC-349.

2. Is the property designed or constructed to remain permanently in place?
3. Are there circumstances which tend to show the expected or intended length of affixation, i.e., are there circumstances which show that the property may or will have to be moved?
4. How substantial a job is removal of the property and how time-consuming is it?
5. How much damage will the property sustain upon its removal?
6. What is the manner of affixation of the property to the land?

In both of the Standard Oil cases, the light poles were identical to the Petitioner's. In both of those cases, the tax court found in applying the Whiteco criteria, that the light poles were tangible personal property. In this case, the Petitioner has separated the outdoor lighting used in the employee parking area and that used to highlight the [Redacted], for the customers and the general sales area. The question, then, is whether the lighting used to advertise the [Redacted], provide security and to create the atmosphere of the sales area is tangible personal property. Internal Revenue Code Section 48 and Treasury Regulation 1.48-1 both look first to the nature of the asset. If the asset in question is tangible personal property it is qualified. Only if it is not personal property, do you go to the second part of that test and see if it is an integral part of the business or used in one of the activities named in the regulation. It can still qualify as section 38 property, even though it might otherwise be part of a building or a land improvement, as long as it is an integral part of the business.

A portion of the lighting claimed during the protest is designated as "building lighting" and is listed as having a 39 year life on the cost segregation study. Since this lighting is not tangible personal property, it does not meet the first test. Other tangible property, (not including a building and its structural components) but only if such property – is used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services,...This portion of the lighting is not tangible personal property or any other tangible property that can qualify for the ITC.

IDAPA 35.01.01.711.04 Leased Property says “Generally the credit for qualified investments in leased property is claimed by the lessor.” The Petitioner in this case is the lessor.

CONCLUSION

The lighting in this case is virtually identical to the lights discussed in the Standard Oil cases. The Tax Court conclusion in Standard Oil was “(a) That the concrete foundations which were designed to have poles bolted thereto are “inherently permanent structures”; “(b) That the poles which were designed to be bolted to the foundations in (a) are not “inherently permanent structures.” The Petitioner separated the cost of the poles and the concrete bases. They only claimed the ITC on the cost of the poles and lights. This is tangible personal property of the type referred to in the Senate Finance Committee report. The Commission agrees with the Petitioner in following the tax court application of the law.

The cost segregation report provided support for \$875,059 of equipment costs. All of those items are accepted by the Commission except \$13,781 for cost of the permanently installed wiring for the outdoor lighting, and the building lighting of \$71,746, leaving \$789,524. Bonus depreciation was claimed on this equipment, reducing that total by 50 percent or \$394,762. The total 3 percent credit earned by [Redacted] that year is \$11,843. The primary owner’s distributive amount of the income, expenses and credits is 75.64 percent. The ITC passed through to the primary owner is \$8,958. This adjustment will be made in Docket No. 26126.

THEREFORE, the NODD dated September 25, 2013, and directed to [Redacted] is hereby MODIFIED.

An explanation of the Petitioner’s right to appeal this decision is enclosed.

DATED this _____ day of _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER
CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
