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U.S. Tax Court: Cement company's depletion deduction rate for calcium carbonates

The U.S. Tax Court today issued a memorandum opinion on the correct depletion percentage rate for calcium carbonates. The court held that the correct rate was specified under section 613(b)(7) and thus sustained an IRS determination to calculate the taxpayer's depletion deduction by applying a rate of 14% against the taxpayer's gross income from mining. The court also found that the costs of minerals purchased from third parties were non-mining costs.

The case is: *Mitshubishi Cement Corp. v. Commissioner*, T.C. Memo 2017-160 (August 21, 2017). Read the Tax Court's [opinion](#) [PDF 81 KB]

The case concerns three issues (two were addressed in this opinion, and the third issue was deferred).

- **The first issue was whether the correct calculation of the taxpayer's depletion deduction from the mining of calcium carbonates was based on a depletion percentage rate of 15% under Reg. section 1.613-2(a)(3), or 14% under section 613(b)(7).** The Tax Court concluded the correct depletion percentage rate for calcium carbonates was the rate specified under section 613(b)(7). Thus, the depletion deduction was to be computed by applying the rate of 14% against the taxpayer's gross income from mining.
- **The second issue was whether the costs of certain materials purchased from third parties and mixed with the taxpayer's calcium carbonates in the process of making finished cement were to be included in "mining costs" for purposes of calculating "gross income from mining" under the proportionate profits method, or alternatively, whether those costs would be included in "total costs" for purposes of that calculation.** The court concluded that the costs of the minerals that the taxpayer purchased from third parties were non-mining costs in respect of the taxpayer's mined calcium carbonates. Thus, the

costs of the additive minerals were to be included as part of the taxpayer's total costs in computing its gross income from mining under the proportionate profits method.

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