***54 T.C. 668 (1970)***

The term ‘concrete aggregates, or for similar purposes’ in 26 U.S.C. § 613(b)(7) is interpreted broadly to include materials used in competition with concrete and serving a similar aggregate function, even if they also have a chemical reaction in the final product, thus qualifying for a lower depletion allowance rate.

**Summary**

G. & W. H. Corson, Inc. mined dolomitic limestone and used it to manufacture Poz-O-Pac, a road base material, and masonry cement. Corson sought a 15% depletion allowance for the dolomitic limestone, arguing it was used for its chemical properties in these products. The Commissioner of Internal Revenue argued for a 5% depletion rate, contending the limestone was used as road material or concrete aggregate. The Tax Court sided with the Commissioner, holding that despite a chemical reaction occurring, the dolomitic limestone in both Poz-O-Pac and masonry cement primarily functioned as an aggregate, similar to road material and concrete aggregate. Therefore, the 5% depletion rate was applicable. The court emphasized the competitive use and aggregate function of the limestone over its chemical reactivity in determining the appropriate depletion allowance.

**Facts**

G. & W. H. Corson, Inc. mined dolomitic limestone, a carbonate rock. They manufactured Poz-O-Pac, a patented product for road bases, composed of hydrated lime, fly ash, dolomitic limestone aggregate, and water. They also produced Corson’s Masonry Cement, containing Portland cement, fly ash, hydrated lime, and pulverized dolomitic limestone. Poz-O-Pac was primarily used as a base for road surfaces. Corson used its own dolomitic limestone as the aggregate in Poz-O-Pac. In both Poz-O-Pac and masonry cement, a chemical reaction occurred between the dolomitic limestone and fly ash, which reduced the amount of hydrated lime needed in the formulas. Corson claimed a 15% depletion allowance for the dolomitic limestone used in Poz-O-Pac and masonry cement, arguing it was used for chemical purposes.

**Procedural History**

The Commissioner of Internal Revenue determined deficiencies in Corson’s income taxes for the calendar years 1961, 1962, and 1963. Corson contested the Commissioner’s determination regarding the applicable depletion allowance rate for dolomitic limestone used in Poz-O-Pac and masonry cement by petitioning the United States Tax Court.

**Issue(s)**

1. Whether the dolomitic limestone used by Corson in the manufacture of Poz-O-Pac is entitled to a 5-percent or 15-percent depletion allowance under 26 U.S.C. § 613(b)(7).

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2. Whether the dolomitic limestone used by Corson in the manufacture of masonry cement is entitled to a 5-percent or 15-percent depletion allowance under 26 U.S.C. § 613(b)(7).

3. What is the proper value to be used for the computation of the depletion allowance of the dolomitic limestone used in Poz-O-Pac?

**Holding**

1. No, because the dolomitic limestone used in Poz-O-Pac is used as road material, concrete aggregate, or for similar purposes within the meaning of 26 U.S.C. § 613(b)(7).

2. No, because the dolomitic limestone used in masonry cement is used as concrete aggregate or for similar purposes within the meaning of 26 U.S.C. § 613(b)(7).

3. The proper value for depletion computation of dolomitic limestone used in Poz-O-Pac is the value of dolomitic limestone used as roadstone.

**Court's Reasoning**

The Tax Court interpreted 26 U.S.C. § 613(b)(7), which provides a 15% depletion rate for 'all other minerals' but reduces it to 5% when used as 'rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes.' The court emphasized that the terms in the statute should be understood in their commercially accepted context. Referencing legislative history, the court noted Congress's intent to prevent 'discrimination in percentage depletion rates between materials which are used competitively for the same purposes.' Even though the dolomitic limestone reacted chemically in Poz-O-Pac and masonry cement, the court found its primary function in both products to be that of an aggregate – a filler and diluent. For Poz-O-Pac, it served a function similar to road material and competed with concrete as a road base. For masonry cement, it functioned as a concrete aggregate in mortar. The court stated, "*The purpose of the 'use test' incorporated into section 613(b)(7) was to prevent such discrimination.*" The court concluded that the 'use test' should be interpreted to include uses 'reasonably commercially competitive with the uses specifically enumerated,' and that the dolomitic limestone in both products fell within the 5% exception due to its aggregate function and competitive use.

**Practical Implications**

*G. & W. H. Corson, Inc. v. Commissioner* establishes a broad interpretation of 'concrete aggregates, or for similar purposes' in the context of mineral depletion allowances. It clarifies that the 'use test' under 26 U.S.C. § 613(b)(7) focuses on the functional use and competitive context of a mineral, rather than solely on its chemical or physical properties. Even if a mineral undergoes a chemical reaction in a final product, if its primary function is comparable to that of enumerated uses like concrete aggregate or road material, the lower 5% depletion rate will apply. This

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case is significant for mineral producers, particularly those in the construction materials industry, as it sets a precedent for how depletion allowances are determined based on the end-use of minerals, emphasizing functional equivalence and market competition over technical or chemical transformations. Subsequent cases analyzing depletion allowances for minerals in composite materials must consider the primary function and competitive role of the mineral component within the broader commercial context of its use.

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