

Internal Revenue Service, Treasury

§ 1.216-2

More than 80 percent of the gross income of the corporation for 1971 was derived from tenant-stockholders. A is entitled under section 216 to a deduction of \$743.48 in computing his taxable income for 1972. The deduction is computed as follows:

Expenses incurred by X Corporation	\$13,800.00
Less: Rent from business space	2,400.00
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Expenses to be prorated among tenant-stockholders	\$11,400.00
Amount paid by A	1,140.00
A's proportionate share of real estate taxes and interest based on his stock ownership (1/10 of \$9,000)	900.00
A's proportionate share of total corporate expenses based on his stock ownership (1/10 of \$13,800)	1,380.00
Amount of A's payment representing real estate taxes and interest (900/1380 of \$1,140)	743.48
A's allowable deduction	743.48

Since the portion of A's payment allocable to real estate taxes and interest is only \$743.48, that amount instead of \$900 is allowable as a deduction in computing A's taxable income for 1972.

Example 3. The facts are the same as in *Example 1* except that the amount paid by A to the X Corporation in 1972 is \$1,000 instead of \$1,380. A is entitled under section 216 to a deduction of \$652.17 in computing his taxable income for 1972. The deduction is computed as follows:

Amount paid by A	\$1,000.00
A's proportionate share of real estate taxes and interest based on his stock ownership (1/10 of \$9,000)	900.00
A's proportionate share of total corporate expenses based on his stock ownership (1/10 of \$13,800)	1,380.00
Amount of A's payment representing real estate taxes and interest (900/1380 of \$1,000)	652.17
A's allowable deduction	652.17

Since the portion of A's payment allocable to real estate taxes and interest is only \$652.17, that amount instead of \$900 is allowable as a deduction in computing A's taxable income for 1972.

Example 4. The facts are the same as in *Example 1* except that X Corporation leases recreational facilities from Y Corporation for use by the tenant-stockholders of X. Under the terms of the lease, X is obligated to pay an annual rental of \$5,000 plus all real estate taxes assessed against the facilities. In 1971 X paid, in addition to the \$13,800 of expenses enumerated in *Example 1*, \$5,000 rent and \$1,000 real estate taxes. In 1972 A pays the X Corporation \$2,000, no part of which is refunded to him in 1972. A is entitled under section 216 to a deduction of \$900 in computing his taxable income for 1972. The deduction is computed as follows:

Expenses to be prorated among tenant-stockholders	\$19,800
Amount paid by A	2,000

A's proportionate share of real estate taxes and interest based on his stock ownership (1/10 of \$9,000)	900
A's proportionate share of total corporate expenses based on his stock ownership (1/10 of \$19,800)	1,980
Amount of A's payment representing real estate taxes and interest (900/1,980 of \$1,980)	900
A's allowable deduction	900

The \$1,000 of real estate taxes assessed against the recreational facilities constitutes additional rent and hence is not deductible by A as taxes under section 216. A's allowable deduction is limited to his proportionate share of real estate taxes and interest based on stock ownership and cannot be increased by the payment of an amount in excess of his proportionate share.

[T.D. 7092, 36 FR 4597, Mar. 10, 1971; 36 FR 4985, Mar. 16, 1971, as amended by T.D. 8316, 55 FR 42004, Oct. 17, 1990]

§ 1.216-2 Treatment as property subject to depreciation.

(a) *General rule.* For taxable years beginning after December 31, 1961, stock in a cooperative housing corporation (as defined by section 216(b) (1) and paragraph (c) of § 1.216-1) owned by a tenant-stockholder (as defined by section 216(b) (2) and paragraph (d) of § 1.216-1) who uses the proprietary lease or right of tenancy, which was conferred on him solely by reason of his ownership of such stock, in a trade or business or for the production of income shall be treated as property subject to the allowance for depreciation under section 167(a) in the manner and to the extent prescribed in this section.

(b) *Determination of allowance for depreciation—(1) In general.* Subject to the special rules provided in subparagraphs (2) and (3) of this paragraph and the limitation provided in paragraph (c) of this section, the allowance for depreciation for the taxable year with respect to stock of a tenant-stockholder, subject to the extent provided in this section to an allowance for depreciation, shall be determined:

(i) By computing the amount of depreciation (amortization in the case of a leasehold) which would be allowable under one of the methods of depreciation prescribed in section 167(b) and the regulations thereunder (in paragraph (a) of § 1.162-11 and § 1.167(a)-4 in the case of a leasehold) in respect of the depreciable (amortizable) real property

owned by the cooperative housing corporation in which such tenant-stockholder has a proprietary lease or right of tenancy,

(ii) By reducing the amount of depreciation (amortization) so computed in the same ratio as the rentable space in such property which is not subject to a proprietary lease or right of tenancy by reason of stock ownership but which is held for rental purposes bears to the total rentable space in such property, and

(iii) By computing such tenant-stockholder's proportionate share of such annual depreciation (amortization), so reduced.

As used in this section, the terms *depreciation* and *depreciable real property* include amortization and amortizable leasehold of real property. As used in this section, the tenant-stockholder's proportionate share is that proportion which stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation, including any stock held by the corporation. In order to determine whether a tenant-stockholder may use one of the methods of depreciation prescribed in section 167(b) (2), (3), or (4) for purposes of subdivision (i) of this subparagraph, the limitations provided in section 167(c) on the use of such methods of depreciation shall be applied with respect to the depreciable real property owned by the cooperative housing corporation in which the tenant-stockholder has a proprietary lease or right of tenancy, rather than with respect to the stock in the cooperative housing corporation owned by the tenant-stockholder or with respect to the proprietary lease or right of tenancy conferred on the tenant-stockholder by reason of his ownership of such stock. The allowance for depreciation determined under this subparagraph shall be properly adjusted where only a portion of the property occupied under a proprietary lease or right of tenancy is used in a trade or business or for the production of income.

(2) *Stock acquired subsequent to first offering.* Except as provided in subparagraph (3), in the case of a tenant-stockholder who purchases stock other than as part of the first offering of stock by

the corporation, the basis of the depreciable real property for purposes of the computation required by subparagraph (1)(i) of this paragraph shall be the amount obtained by:

(i) Multiplying the taxpayer's cost per share by the total number of outstanding shares of stock of the corporation, including any shares held by the corporation,

(ii) Adding thereto the mortgage indebtedness to which such depreciable real property is subject on the date of purchase of such stock, and

(iii) Subtracting from the sum so obtained the portion thereof not properly allocable as of the date such stock was purchased to the depreciable real property owned by the cooperative housing corporation in which such tenant-stockholder has a proprietary lease or right of tenancy.

In order to prevent an overstatement or understatement of the basis of the depreciable real property for purposes of the computation required by subparagraph (1)(i) of this paragraph, appropriate adjustment for purposes of the computations described in subdivisions (i) and (ii) of this subparagraph shall be made in respect of prepayments and delinquencies on account of the corporation's mortgage indebtedness. Thus, for purposes of subdivision (i) of this subparagraph, the taxpayer's cost per share shall be reduced by an amount determined by dividing the total mortgage indebtedness prepayments in respect of the shares purchased by the taxpayer by the number of such shares. For purposes of subdivision (ii) of this subparagraph, the mortgage indebtedness shall be increased by the sum of all prepayments applied in reduction of the mortgage indebtedness and shall be decreased by any amount due under the terms of the mortgage and unpaid.

(3) *Conversion subsequent to date of acquisition.* In the case of a tenant-stockholder whose proprietary lease or right of tenancy is converted, in whole or in part, to use in a trade or business or for the production of income on a date subsequent to the date on which he acquired the stock conferring on him such lease or right of tenancy, the basis of the depreciable real property

for purposes of the computation required by subparagraph (1)(i) of this paragraph shall be the fair market value of such depreciable real property on the date of the conversion if the fair market value is less than the adjusted basis of such property in the hands of the cooperative housing corporation provided in section 1011 without taking into account any adjustment for depreciation required by section 1016(a)(2). Such fair market value shall be deemed to be equal to the adjusted basis of such property, taking into account adjustments required by section 1016(a)(2) computed as if the corporation had used the straight line method of depreciation, in the absence of evidence establishing that the fair market value so attributed to the property is unrealistic. In the case of a tenant-stockholder who purchases stock other than as part of the first offering of stock of the corporation, and at a later date converts his proprietary lease to use for business or production of income:

(i) The adjusted basis of the cooperative housing corporation's depreciable real property without taking into account any adjustment for depreciation shall be the amount determined in accordance with subdivisions (i), (ii), and (iii) of subparagraph (2) of this paragraph, and

(ii) The fair market value shall be deemed to be equal to such adjusted basis reduced by the amount of depreciation, computed under the straight line method, which would have been allowable in respect of depreciable real property having a cost or other basis equal to the amount representing such adjusted basis in the absence of evidence establishing that the fair market value so attributed to the property is unrealistic.

(c) *Limitation.* If the allowance for depreciation for the taxable year determined in accordance with the provisions of paragraph (b) of this section exceeds the adjusted basis (provided in section 1011) of the stock described in paragraph (a) of this section allocable to the tenant-stockholder's proprietary lease or right of tenancy used in a trade or business or for the production of income, such excess is not allowable as a deduction. For taxable years beginning after December 31, 1986, such

excess, subject to the provisions of this paragraph (c), is allowable as a deduction for depreciation in the succeeding taxable year. To determine the portion of the adjusted basis of such stock which is allocable to such proprietary lease or right of tenancy, the adjusted basis is reduced by taking into account the same factors as are taken into account under paragraph (b)(1) of this section in determining the allowance for depreciation.

(d) *Examples.* The provisions of section 216(c) and this section may be illustrated by the following examples:

Example 1. The Y corporation, a cooperative housing corporation within the meaning of section 216, in 1961 purchased a site and constructed thereon a building with 10 apartments at a total cost of \$250,000 (\$200,000 being allocable to the building and \$50,000 being allocable to the land). Such building was completed on January 1, 1962, and at that time had an estimated useful life of 50 years, with an estimated salvage value of \$20,000. Each apartment is of equal value. Upon completion of the building, Y corporation mortgaged the land and building for \$150,000 and sold its total authorized capital stock, consisting of 1000 shares of common stock, for \$100,000. The stock was purchased by 10 individuals each of whom paid \$10,000 for 100 shares. Each certificate for 100 shares provides that the holder thereof is entitled to a proprietary lease of a particular apartment in the building. Each lease provides that the lessee shall pay his proportionate share of the corporation's expenses including an amount on account of the curtailment of Y's mortgage indebtedness. B, a calendar year taxpayer, is the original owner of 100 shares of stock in Y corporation. On January 1, 1962, B subleases his apartment for a term of 5 years. B's stock in Y corporation is treated as property subject to the allowance for depreciation under section 167(a), and B, who uses the straight line method of depreciation for purposes of the computation prescribed by paragraph (b)(1)(i) of this section, computes the allowance for depreciation for the taxable year 1962 with respect to such stock as follows:

Y's basis in the building	\$200,000
Less: Estimated salvage value	\$20,000
	\$180,000
Y's basis for depreciation	\$180,000
Annual straight line depreciation on Y's building (1/50 of \$180,000)	\$3,600
Proportion of outstanding shares of stock of Y corporation (1,000) owned by B (100)	1/10
B's proportionate share of annual depreciation (1/10 of \$3,600)	\$360
Depreciation allowance for 1962 with respect to B's stock (if the limitation in paragraph (c) of this section is not applicable)	\$360

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Example 2. The facts are the same as in *Example 1* except that the building constructed by Y corporation contained, in addition to the 10 apartments, space on the ground floor for 2 stores which were rented to persons who do not have a proprietary lease of such space by reason of stock ownership. Y corporation's building has a total area of 16,000 square feet, the 10 apartments in such building have an area of 10,000 square feet, and the 2 stores on the ground floor have an area of 2,000 square feet. Thus, the total rentable space in Y corporation's building is 12,000 square feet. B, who uses the straight line method of depreciation for purposes of the computation prescribed by paragraph (b)(1)(i) of this section, computes the allowance for depreciation for the taxable year 1962 with respect to his stock in Y corporation as follows:

Y's basis in the building	\$200,000
Less: Estimated salvage value	20,000
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Y's basis for depreciation	180,000
Annual straight line depreciation on Y's building (1/50 of \$180,000)	3,600
Less: Amount representing rentable space not subject to proprietary lease but held for rental purposes over total rentable space 2,000÷12,000 (of \$3,600)	600
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Annual depreciation, as reduced	3,000
B's proportionate share of annual depreciation (1/10 of \$3,000)	300
Depreciation allowance for 1962 with respect to B's stock (if the limitation in paragraph (c) of this section is not applicable)	300

Example 3. The facts are the same as in *Example 1* except that B occupies his apartment from January 1, 1962, until December 31, 1966, and that on January 1, 1967, B sells his stock to C, an individual, for \$15,000. C thereby obtains a proprietary lease from Y corporation with the same rights and obligations as B's lease provided. Y corporation's records disclose that its outstanding mortgage indebtedness is \$135,000 on January 1, 1967. C, a physician, uses the entire apartment solely as an office. C's stock in Y corporation is treated as property subject to the allowance for depreciation under section 167(a), and C, who uses the straight line method of depreciation for purposes of the computation prescribed by paragraph (b)(1)(i) of this section, computes the allowance for depreciation for the taxable year 1967 with respect to such stock as follows:

Price paid for each share of stock in Y corporation purchased by C on 1-1-67 (\$15,000÷100)	\$150
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Per share price paid by C multiplied by total shares of stock in Y corporation outstanding on 1-1-67 (\$150×1,000)	150,000
Y's mortgage indebtedness outstanding on 1-1- 67	135,000

	285,000
Less: Amount attributable to land (assumed to be 1/5 of \$285,000)	57,000
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Less: Estimated salvage value	20,000
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Basis of Y's building for purposes of computing C's depreciation	208,000
Annual straight line depreciation (1/45 of \$208,000)	4,622.22
C's proportionate share of annual depreciation (1/10 of \$4,622.22)	462.22
Depreciation allowance for 1967 with respect to C's stock (if the limitation in paragraph (c) of this section is not applicable)	462.22

[T.D. 6725, 29 FR 5665, Apr. 29, 1964, as amended by T.D. 8316, 55 FR 42006, Oct. 17, 1990]

§ 1.217-1 Deduction for moving expenses paid or incurred in taxable years beginning before January 1, 1970.

(a) *Allowance of deduction—(1) In general.* Section 217(a) allows a deduction from gross income for moving expenses paid or incurred by the taxpayer during the taxable year in connection with the commencement of work as an employee at a new principal place of work. Except as provided in section 217, no deduction is allowable for any expenses incurred by the taxpayer in connection with moving himself, the members of his family or household, or household goods and personal effects. The deduction allowable under this section is only for expenses incurred after December 31, 1963, in taxable years ending after such date and beginning before January 1, 1970, except in cases where a taxpayer makes an election under paragraph (g) of § 1.217-2 with respect to moving expenses paid or incurred before January 1, 1971, in connection with the commencement of work by such taxpayer as an employee at a new principal place of work of which such taxpayer has been notified by his employer on or before December 19, 1969. To qualify for the deduction the expenses must meet the definition of the term "moving expenses" provided in section 217(b); the taxpayer must meet the conditions set forth in section 217(c); and, if the taxpayer receives a reimbursement or other expense allowance for an item of expense, the deduction for the portion of the expense reimbursed is allowable only to the extent that such reimbursement or other expense allowance is included in