

BROWNFIELDS INCENTIVES AND SMART GROWTH

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Building on land that has been blighted by industrial uses was often avoided by developers who feared the liabilities that might come from contamination.¹ As a result, developers began to move development away from these historical urban industrial areas to rural areas that had not been developed previously (“greenfield areas”). The result of this expanded development contributed to what is commonly referred to as “urban sprawl.” Urban sprawl has damaged valuable natural resources in these greenfield areas, while leaving these previously industrialized areas contaminated and abandoned. Now, federal, state, and local redevelopment programs (e.g. Brownfields Tax Incentive) and planning (e.g. Maryland’s Smart Growth Program) are making opportunities for developing these historical industrial sites much more appealing.

Brownfields Redevelopment Programs

The U.S. Environmental Protection Agency’s (“USEPA”) Superfund program has spent more than \$30 billion during the past 20 years to clean contaminated sites. Very few of these contaminated sites have achieved closure. An unwelcome outgrowth of the Superfund program was the creation of “brownfields.”

Brownfields are abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. USEPA has estimated, as many as 450,000 brownfield sites exist across the country. The fear of costly cleanups is a major obstacle of brownfield redevelopment. Federal, state, and municipal agencies have created tax incentives to offset the cost of environmental cleanup and encourage brownfield redevelopment.

A. Small Business Liability Relief and Brownfields Revitalization Act

On January 11, 2002, President Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act (“Amendment”), which amends the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”),

¹ Authors wish to thank Virginia Leggett Stevenson of Sidley Austin Brown & Wood for her assistance in initially drafting this article.

commonly known as the Federal Superfund Act. This Amendment is one of the most comprehensive amendments to CERCLA and makes several changes to CERCLA's liability scheme to encourage the redevelopment of land. The Amendment can be divided into eight areas. Five concern the liability scheme, one relates to settlements and the last two create federal programs to encourage redevelopment. Below is a brief summary of these changes:

1. Bona Fide Prospective Purchasers.

Under § 107 of CERCLA, an owner is liable for contamination at a site if the owner is in the chain of title. Under the Amendment, a "bona fide prospective purchaser" will not be liable for existing contamination as long as the owner does not impede the performance of a response action. To qualify for this exemption, the prospective purchaser must establish that (1) the contamination occurred prior to acquisition; (2) the prospective purchaser made all commercially appropriate inquiries in accordance with new due diligence standards (discussed below); (3) the prospective purchaser provided all legally required notices about the discovery of the contamination; (4) the prospective purchaser took reasonable steps to stop the continued release of contamination and limit exposure to previous releases; (5) the prospective purchaser complies with existing or clean-up derived "institutional controls," such as deed restrictions on the use of the parcel; (6) the prospective purchaser complies with USEPA's information requests; and (7) the prospective purchaser is not considered a liable party, or affiliated with a liable party. Note that this protection does not extend to sites contaminated with petroleum because CERCLA specifically excludes from the definition of "hazardous substance" petroleum based contamination. One other significant caveat to this provision is that USEPA may impose a lien on the property for any unrecovered response cost.

2. Innocent Landowner Defense.

CERCLA contained a defense against liability if the owner could establish basically that he/she had no reason to believe the site was contaminated and exercised due care. The Amendment revised this defense in several respects. First, it defines due care as cooperating with any on-going clean-up at the site, including access and imposing deed restrictions on the use of the site. The Amendment also further defines due care by stating that the purchaser must have conducted "all appropriate inquiry", which will be defined in the future by USEPA through regulations. The new regulations will basically mirror the ASTM standards that most parties follow now.

3. Exemption for Owner if Properties Contiguous to Contaminated Sites.

One problem has been what liability should be imposed on owners of property down gradient of the contamination, especially when the contamination migrates to the down gradient property. The Amendment addresses this problem and provides liability protection as long as the down gradient owner did not contribute to the release and basically cooperates in the remediation.

4. Brownfield Programs.

The Amendment provides several Brownfield incentives. First, it creates a definition for the term. Brownfield means real property where “the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence” of hazardous substances. The definition also extends for grant purposes to both petroleum-contaminated sites that are low risk and there is no viable responsible parties, and mine-scarred land. The definition for funding also generally excludes certain sites, such as federal facilities and PCB sites.

5. Revitalization Funding Program.

One of the more significant parts of the Amendment is a federal funding program. This program creates a grant program of up to \$200 million per year from FY 2002 through 2006. Of these funds, one quarter is to be used for petroleum-contaminated Brownfield sites. Assuming this program will be funded, governmental and redevelopment authorities can apply for grants to inventory potential Brownfield sites, and perform site characterization and assessments (up to \$200,000 per site). Grants of up to \$200,000 are available for remediation and capitalizing revolving loan funds are available for others to remediate the site. Grants may be up to \$1 million in exceptional circumstances.

6. State Response Programs.

The Amendment also creates a grant program for state voluntary remediation programs. Under this grant program, \$50 million per year from FY 2002 through 2006 will be available to states’ Brownfield-related programs or voluntary response programs that are already subject to a Memorandum of Agreement (“MOA”) with USEPA. Currently, 15 states have an MOA with USEPA. The grants may be used to establish or enhance existing programs, such as to capitalize revolving loan funds or create an insurance pool to fund response activities.

7. Small Business Liability Relief.

A significant change from past CERCLA liability is the new de minimis exemption for liability at National Priority List (“NPL”) sites. Under this section, persons whose liability at a CERCLA site is based on the generation or transportation of less than 110 gallons of liquid waste or less than 200 pounds of solid waste are exempt from liability.

8. Municipal Solid Waste Liability Relief.

Another exemption to liability at NPL sites is for the disposal of municipal solid waste containing hazardous substances. This exemption applies to residential parties, businesses employing fewer than 100 persons and charitable organizations employing fewer than 100 persons. Note that this provision does not include an exemption from liability for municipalities.

9. DeMinimis Settlements.

For parties that contributed only a small amount of waste to a superfund site (DeMinimis Parties), the Amendment requires USEPA to respond promptly to requests for de minimis settlements and take into consideration a party's inability to pay.

Above is just a brief summary of the Amendment. At first blush, it offers prospective purchasers many benefits. However, there are many complicated provisions that must be interpreted. Further, while the grants sound very promising, Congress must appropriate the money to fund the programs.

B. Taxpayer Relief Act

Another act that promotes redevelopment is Public Law 105-34, known as the Taxpayer Relief Act, which was signed into law in 1997. Section 941(a) of the Taxpayer Relief Act created Tax Code section 198, which allowed taxpayers to elect to deduct the total cost of certain environmental remediation expenses in the year the expenses were incurred regardless of whether or not the taxpayer had caused the contamination. Code section 198 became known as the "Brownfields Tax Incentive."

Prior to the Brownfields Tax Incentive, the Internal Revenue Service ("IRS") only allowed taxpayers who had caused the contamination to deduct soil and groundwater remediation costs in the year these costs were incurred. Rev. Rul. 94-38, 1994-1 C.B. 35. Taxpayers who owned contaminated property, but had not caused the contamination could generally only capitalize the expenses of these activities over a number of years. While a portion of the capitalized costs could theoretically be taken as a deduction in the remaining years of the remediated asset's useful life, taxpayers who remediated contaminated real estate could not deduct all of the remediation costs in one year.

The Brownfields Tax Incentive simply attempted to level the playing field so that remediation costs could be deducted in certain circumstances regardless of whether the taxpayer contaminated the property. However, the tax relief under the Brownfields Tax Incentive is not available for every contaminated property. Generally, the contaminated areas must be located in poor areas (census tracts with a high percentage of people beneath the poverty level); or properties already designated federal Empowerment Zones, Enterprise Communities; or USEPA Brownfield Pilot areas.

When the Brownfields Tax Incentive was first enacted, legislators had high hopes of the law's success in redeveloping brownfields. In fact, then-President Clinton stated,

It will also provide tax cuts to businesses that clean up urban toxic waste sites known as brownfields, and convert these sites to productive use. It will create 20 more empowerment zones to attract businesses into disadvantaged neighborhoods, and it includes tax incentives to revive our nation's capital.

The brownfields and the empowerment zones were both mentioned in the budget agreement as items that the leaders would work hard to include in the final tax bill. It is now for all the leaders who did the agreement to work together to achieve that. Only by bringing the spark of private enterprise into our inner cities will we truly break the cycle of poverty that holds too many of our people back.

President Clinton's Prepared Remarks on Tax Cut Legislation – June 30, 1997, Daily Tax Report, July 1, 1997. Curiously, USEPA commented shortly after the adoption of Brownfield Tax Incentive that it did not anticipate that the new tax incentive would have a direct impact on USEPA's brownfields redevelopment program, although an official at the agency estimated that it would return an estimated 14,000 brownfields back to productive use and would require the investment of \$6 billion of private investment. Tax Incentive New 'Tool' for Communities Seeking to Redevelop Urban Areas, EPA Says, Daily Tax Report, August 20, 1997.

Other federal proposals aimed at promoting brownfields redevelopment, such as the Better America Bonds proposal championed by then-Vice President Gore which would have provided funds for redeveloping brownfields, revitalizing downtowns, and buying farmland and wetlands for preservation, were never enacted. Gore Announces Tax Incentives to Promote 'Livable Communities', Daily Tax Report, January 12, 1999.

In 1999, the Brownfields Tax Incentive's original expiration date of 2000 was extended to 2001 by section 511 of Public Law 106-170. However by 2000, commentators were aware that the Brownfield Tax Incentive had not been useful at encouraging brownfields redevelopment. As was originally written, the Brownfield Tax Incentive was considered to be of limited usefulness because of the limited number of sites that were covered. More Sites Would See Special Tax Treatment Under Measure Passed by Congress Dec. 15, Daily Tax Report, December 19, 2000. While legislators originally sought to make the benefits of the Brownfield Tax Incentive permanent, arguing "Many taxpayers are unable or unwilling to undertake long-term remediation projects based on the current-law temporary incentive because environmental remediation often extends over a number of years," the law will currently expire in 2003. See Treasury Department News Release LS-796: Treasury Deputy Secretary for Tax Policy Jonathan Talisman's Testimony: Senate Finance Subcommittee on Taxation and IRS Oversight, (July 25, 2000).

Legislation was introduced and passed to broaden the type and number of sites for which the expensing of brownfields remediation expenses would be allowed as part of a package that would use tax incentives as a means of reducing sprawl by promoting redevelopment of urban and suburban properties. Johnson Seeks Tax Incentives Designed to Combat Urban Sprawl, Daily Tax Report, June 25, 1999. The legislation that passed, Public Law 106-554, amended the Brownfield Tax Incentive to include thousands more sites identified by USEPA and the U.S. Conference of Mayors as contaminated. More Sites Would See Special Tax Treatment Under Measure Passed by Congress Dec. 15, Daily Tax Report, December 19, 2000. These additional sites would include suburban sites, such as old industrial areas or abandoned gas stations, as well as urban sites. Id.

Open Space Planning

Over the past forty years, all fifty states have enacted legislation aimed at preserving land for agricultural or open space use. Some states have very active programs.

One example is Maryland's Smart Growth Program. Adopted in 1997, this program's initiatives aim to direct state resources to revitalizing older developed areas and discouraging the continuation of sprawling development into rural areas. To promote these incentives, Maryland limits most of the state's infrastructure funding and economic development and housing money to Smart Growth Areas, which local governments have designated for growth. Md State Finance and Procurement Code 5-7B-01. Maryland also has implemented a "Live Near Your Work" program that provides cash contributions to workers buying homes in certain older neighborhoods, and a Rural Legacy Program which redirects state funds into land preservation program to limit the adverse effect of urban sprawl by purchasing conservation easements for large contiguous areas of undeveloped land. Md Natural Resources Code 5-9A-01.

Another active open space preservation program is Oregon's Land Use Planning Act of 1973. Or Rev Stat 197.005-197.860. Under this act, local governments in Oregon must establish an Urban Growth Boundary ("UGB") that separates an urban area from rural land, and requires that all land outside the UGB be zoned exclusively for farm use if the land is classified as "prime farmland" by the Soil Conservation Service. Additionally, Oregon's act requires local governments to arrange public facilities to serve both urban and rural development and to plan for adequate housing within the urban areas.

Key Provisions of Code section 198

- Deduction. Environmental remediation expenditures which would otherwise have to be capitalized may be deductible under Code section 198 if they are “qualified environmental remediation expenditures.” Code § 198(a).
- Qualified environmental remediation expenditures. “Qualified environmental remediation expenditures” are those expenditures which are (A) otherwise chargeable to a capital account and (B) which are paid or incurred in connection with the abatement or control of hazardous substances at a “qualified contaminated site.” Code § 198(b)(1).
 - Depreciable property. Only the portion of an expenditure for depreciable property for which an allowance is made under Code section 167 is treated as a qualified environmental remediation expenditure. Code § 198(b)(2).
- Qualified contaminated site. For expenses paid or incurred after December 21, 2000, a “qualified contaminated site” is any area (A) which is held by the taxpayer for use in a trade or business or for the production of income, or which is property described in section 1221(a)(1) [inventory] in the hands of the taxpayer; and (B) at or on which there has been a release or a threatened release or disposal of any hazardous substance. Code § 198(c)(1). Superfund sites do not qualify as qualified contaminated sites. Code § 198(c)(2). A taxpayer must receive a certification from the appropriate state environmental agency that its site that meets the definition of qualified contaminated site in Code section 198(c)(1). Code § 198(c)(3).
 - For expenses paid or incurred on or before December 21, 2000, a qualified contaminated site must also lie within a “targeted area.” Former Code § 198(c)(1)(A)(ii). A “targeted area” was (I) any population census tract with a poverty rate of not less than 20 percent; (ii) a population census tract with a population of less than 2,000 if (I) more than 75 percent of such tract is zoned for commercial or industrial use, and (II) such tract is contiguous to one or more other population census tracts which meet the requirements of (i); (iii) any empowerment zone or enterprise community; and (iv) any site listed as one of the 76 brownfields pilot projects of USEPA that were announced before February 1997.
- Hazardous substances. Hazardous substances have the same meaning that they do under sections 101(14) and 102 of CERCLA, 42 U.S.C. §§ 9601(14), 9602. Code § 198(d).
- Recapture. Where property with respect to which a deduction under Code section 198 has previously been taken, recapture of the deductions may occur under Code section 1245 if the property is ever sold. Code § 198(e). The mechanics of the recapture are as follows: the basis of the property is reduced by the amount of the Code section 198 deduction. The basis is then subtracted from the amount realized. The portion of the gain, up to which the basis was reduced by the Code section 198 deduction, is recharacterized as ordinary income, which has the effect of “recapturing” the deduction taken earlier.

- Coordination with other rules. While demolition losses and mine reclamation expenses are ordinary not deductible, these rules are inapplicable to the extent that Code section 198 would allow a deduction for the expense. Code § 198(f).
- Mechanics of making election and taking deduction. Revenue Procedure 98-47, 1998-37, I.R.B. 8, gives the procedures for taking advantage of Code section 198.
 - When. Generally, the election must be made by the due date of the taxpayer's return (including extensions).
 - Expense by expense basis. The election to take a Code section 198 deduction for any qualifying expenditure may be made on an item by item basis. Expenditures for which the election is not taken are capitalized. Rev. Proc. 98-47.
 - Year by year basis. An election applies only on a per-taxable year basis. Thus, a multi-year project can be expensed only if the election is made in each taxable year. Rev. Proc. 98-47.
 - How.
 - Individuals. Individuals must include their Code section 198 expenses on the line for "Other Expenses" on Schedule C, E, or F on their Form 1040. Individuals must separately identify each expense included in "Other Expenses," and must write "Section 198 Election" next to each listed item of expense.
 - Entities. Entities must include their Code section 198 expenses on the line for "Other Deductions" (or any similar line if no such line is listed) on their federal income tax returns. On a schedule attached to the return that separately identifies each expense included in "Other Deductions," the taxpayer must write "Section 198 Election" next to each listed item of expense.
- Revoking the election. The Code section 198 election is revocable only with the prior written consent of the IRS, which must be requested via a request for a private letter ruling for any taxable year for which the statute of limitations has not yet expired. Rev. Proc. 98-47.

Code section 198 as originally enacted in 1997

SEC. 198. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) IN GENERAL- A taxpayer may elect to treat any qualified environmental remediation expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

(b) QUALIFIED ENVIRONMENTAL REMEDIATION EXPENDITURE- For purposes of this section--

(1) IN GENERAL- The term 'qualified environmental remediation expenditure' means any expenditure--

(A) which is otherwise chargeable to capital account, and

(B) which is paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site.

(2) SPECIAL RULE FOR EXPENDITURES FOR DEPRECIABLE PROPERTY- Such term shall not include any expenditure for the acquisition of property of a character subject to the allowance for depreciation which is used in connection with the abatement or control of hazardous substances at a qualified contaminated site; except that the portion of the allowance under section 167 for such property which is otherwise allocated to such site shall be treated as a qualified environmental remediation expenditure.

(c) QUALIFIED CONTAMINATED SITE- For purposes of this section--

(1) QUALIFIED CONTAMINATED SITE-

(A) IN GENERAL- The term 'qualified contaminated site' means any area--

(i) which is held by the taxpayer for use in a trade or business or for the production of income, or which is property described in section 1221(1) in the hands of the taxpayer,

(ii) which is within a targeted area, and

(iii) at or on which there has been a release (or threat of release) or disposal of any hazardous substance.

(B) TAXPAYER MUST RECEIVE STATEMENT FROM STATE ENVIRONMENTAL AGENCY- An area shall be treated as a qualified contaminated site with respect to expenditures paid or incurred during any taxable year only if the taxpayer receives a statement from the appropriate agency of the State in which such area is located that such area meets the requirements of clauses (ii) and (iii) of subparagraph (A).

(C) APPROPRIATE STATE AGENCY- For purposes of subparagraph (B), the chief executive officer of each State may, in consultation with the Administrator of the Environmental Protection Agency, designate the appropriate State environmental agency within 60 days of the date of the enactment of this section. If the chief executive officer of a State has not designated an appropriate State environmental agency within such 60-day period, the appropriate environmental agency for such State shall be designated by the Administrator of the Environmental Protection Agency.

(2) TARGETED AREA-

(A) IN GENERAL- The term 'targeted area' means--

(i) any population census tract with a poverty rate of not less than 20 percent,²

(ii) a population census tract with a population of less than 2,000 if--

(I) more than 75 percent of such tract is zoned for commercial or industrial use, and

(II) such tract is contiguous to 1 or more other population census tracts which meet the requirement of clause (i) without regard to this clause,

(iii) any empowerment zone or enterprise community³ (and any supplemental zone designated on December 21, 1994), and

(iv) any site announced before February 1, 1997, as being included as a brownfields pilot project of the Environmental Protection Agency.

(B) NATIONAL PRIORITIES LISTED SITES NOT INCLUDED- Such term shall not include any site which is on, or proposed for, the national priorities list under section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this section).

(C) CERTAIN RULES TO APPLY- For purposes of this paragraph the rules of sections 1392(b)(4) and 1393(a)(9) shall apply.

(d) HAZARDOUS SUBSTANCE- For purposes of this section--

² Link to poverty percentage by census tract 1990 census:
<http://www.census.gov/geo/www/ezstate/poverty.html>.

Link to maps showing location of census tracts for 1990 census:
<http://tier2.census.gov/ctsl/ctsl.htm>.

³ Link to empowerment zone / enterprise community locator:
<http://www.hud.gov/ezec/locator/>.

(1) IN GENERAL- The term `hazardous substance' means--

(A) any substance which is a hazardous substance as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,⁴ and

(B) any substance which is designated as a hazardous substance under section 102 of such Act.⁵

(2) EXCEPTION- Such term shall not include any substance with respect to which a removal or remedial action is not permitted under section 104 of such Act by reason of subsection (a)(3) thereof.

(e) DEDUCTION RECAPTURED AS ORDINARY INCOME ON SALE, ETC- Solely for purposes of section 1245, in the case of property to which a qualified environmental remediation expenditure would have been capitalized but for this section--

(1) the deduction allowed by this section for such expenditure shall be treated as a deduction for depreciation, and

(2) such property (if not otherwise section 1245 property) shall be treated as section 1245 property solely for purposes of applying section 1245 to such deduction.

(f) COORDINATION WITH OTHER PROVISIONS- Sections 280B and 468 shall not apply to amounts which are treated as expenses under this section.

(g) REGULATIONS- The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(h) TERMINATION- This section shall not apply to expenditures paid or incurred after December 31, 2000.

⁴ See 42 U.S.C. § 9601(14).

⁵ See 42 U.S.C. § 9602.

Code section 198 as currently written

SEC. 198. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) IN GENERAL.-- A taxpayer may elect to treat any qualified environmental remediation expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

(b) QUALIFIED ENVIRONMENTAL REMEDIATION EXPENDITURE.--
For purposes of this section--

(1) IN GENERAL.--The term "qualified environmental remediation expenditure" means any expenditure--

(A) which is otherwise chargeable to capital account, and

(B) which is paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site.

(2) SPECIAL RULE FOR EXPENDITURES FOR DEPRECIABLE PROPERTY.-- Such term shall not include any expenditure for the acquisition of property of a character subject to the allowance for depreciation which is used in connection with the abatement or control of hazardous substances at a qualified contaminated site; except that the portion of the allowance under section 167 for such property which is otherwise allocated to such site shall be treated as a qualified environmental remediation expenditure.

(c) QUALIFIED CONTAMINATED SITE.-- For purposes of this section--

(1) IN GENERAL.--The term "qualified contaminated site" means any area--

(A) which is held by the taxpayer for use in a trade or business or for the production of income, or which is property described in section 1221(a)(1) in the hands of the taxpayer, and

(B) at or on which there has been a release (or threat of release) or disposal of any hazardous substance.

(2) NATIONAL PRIORITIES LISTED SITES NOT INCLUDED.-- Such term shall not include any site which is on, or proposed for, the national priorities list under section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this section).

(3) TAXPAYER MUST RECEIVE STATEMENT FROM STATE ENVIRONMENTAL AGENCY.-- An area shall be treated as a qualified contaminated site with respect to expenditures paid or incurred during any taxable year only if the taxpayer

receives a statement from the appropriate agency of the State in which such area is located that such area meets the requirement of paragraph (1)(B).

(4) APPROPRIATE STATE AGENCY.-- For purposes of paragraph (3), the chief executive officer of each State may, in consultation with the Administrator of the Environmental Protection Agency, designate the appropriate State environmental agency within 60 days of the date of the enactment of this section. If the chief executive officer of a State has not designated an appropriate environmental agency within such 60-day period, the appropriate environmental agency for such State shall be designated by the Administrator of the Environmental Protection Agency.

(d) HAZARDOUS SUBSTANCE.-- For purposes of this section--

(1) IN GENERAL.-- The term "hazardous substance" means--

(A) any substance which is a hazardous substance as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

(B) any substance which is designated as a hazardous substance under section 102 of such Act.

(2) EXCEPTION.-- Such term shall not include any substance with respect to which a removal or remedial action is not permitted under section 104 of such Act by reason of subsection (a)(3) thereof.

(e) DEDUCTION RECAPTURED AS ORDINARY INCOME ON SALE, ETC.--

Solely for purposes of section 1245 , in the case of property to which a qualified environmental remediation expenditure would have been capitalized but for this section--

(1) the deduction allowed by this section for such expenditure shall be treated as a deduction for depreciation, and

(2) such property (if not otherwise section 1245 property) shall be treated as section 1245 property solely for purposes of applying section 1245 to such deduction.

(f) COORDINATION WITH OTHER PROVISIONS.-- Sections 280B and 468 shall not apply to amounts which are treated as expenses under this section.

(g) REGULATIONS.-- The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(h) TERMINATION.-- This section shall not apply to expenditures paid or incurred after December 31, 2003.