Equivalent Citations
65 T.C. 664 . 1975 WL 3184 .

WHITECO INDUSTRIES, INC., ET AL., PETITIONERS v. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT Cases of the following petitioners are consolidated herewith: Whiteco Industries, Inc., and Subsidiaries, docket Nos. 3919-73 and 7188-74.

United States Tax Court. (Dec 31, 1975)

DOCKET NO.

Docket Nos. 3918-73, 3919-73, 7188-74.

ATTORNEY(S)

John S. Pennell, Don S. Harnack, and George W. Benson, for the petitioners.Harmon B. Dow, for the respondent.

IMPORTANT PARAS

1. (A) tangible personal property, or

2. (a) SECTION 38 PROPERTY. —

3. Thus, all tangible property constitutes tangible personal property unless it is excluded because it is land or an improvement thereto. A building is given as an example of an improvement, but the common characteristic which is attributed to improvements is that they are "inherently permanent structures." Section 1.48-1(c), Income Tax Regs., adopts the same definition of tangible personal property as that given in the technical explanations to the committee reports, and the regulations characterize improvements as "inherently permanent structures." Accordingly, as both parties recognize, resolution of the issue before us turns on whether the petitioner's outdoor advertising signs are "inherently permanent structures."

4. (1) Is the property capable of being moved, and has it in fact been moved? Alabama Displays, Inc. v. United States, 507 F.2d at 849; Joseph Henry Moore, 58 T.C. 1045, 1052 (1972), affd. per curiam 489 F.2d 285 (5th Cir. 1973). The evidence clearly shows that the petitioner's signs are capable of being moved and have in fact been moved.

5. (6) What is the manner of affixation of the property to the land? Joseph B. Weirick, supra; C. C. Everhart, supra; Beverly R. Roberts, supra. The poles on which the petitioner's signs are mounted are placed in the ground and surrounded by concrete; yet, such poles can easily be removed from the ground, and as a matter of practice, they are

so removed.

6. The Commissioner determined the following deficiencies in the petitioners' Federal corporate income taxes: Petitioner Docket No. Year Deficiency Whiteco Industries, Inc. ..... 3918-73 1967 $23,851.14 1968 36,299.98 Whiteco Industries, Inc., and Subsidiaries .... 3919-73 1969 213,169.00 Whiteco Industries, Inc., and Subsidiaries .... 7188-74 1970 32,979.65 1971 58,229.23 Two issues have been settled; the only issue remaining for decision is whether certain outdoor advertising signs may qualify for the investment credit of section 38 of the Internal Revenue Code of 1954.

7. 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). * * * [H. Rept. No. 1447, 87th Cong., 2d Sess. (1962), 1962-3 C.B. 405, 515-516; S. Rept. No. 1881, 87th Cong., 2d Sess. (1962), 1962-3 C.B. 707, 858.]

8. Sec. 1.48-1(c), Income Tax Regs., in relevant part, provides: (c) Definition of tangible personal property. * * * For purposes of this section, the term "tangible personal property" means any tangible property except land and improvements thereto, such as buildings or other inherently permanent structures (including items which are structural components of such buildings or structures). * * * [Emphasis supplied.]

9. (2) Is the property designed or constructed to remain permanently in place? Joseph B. Weirick, 62 T.C. 446, 451 (1974); C. C. Everhart, 61 T.C. 328, 330 (1973); Beverly R. Roberts, 60 T.C. 861, 866 (1973). The evidence in this case indicates that the petitioner's signs are not designed or constructed to last permanently. They are designed or constructed to last for the term of a contract between the petitioner and one of its advertisers. On the average, the term of a contract will last only 5 years. At the end of such period, the sign structure requires substantial renovation. A new sign face must be attached, some stringers must be replaced, and poles are either replaced or straightened and recemented.

10. (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? Alabama Displays, Inc. v. United States, supra; Kenneth D. LaCroix, 61 T.C. at 487. The petitioner does not intend, nor could it realistically expect, the signs to remain permanently in place. The petitioner realizes that in numerous situations it may. have to move its signs at the expiration of a contract with an advertiser, or prior thereto. The signs may have to be moved because the owner of the leased land does not renew

the lease or exercises his option to develop his land, or because there is a change in the location of the road or the occurrence of some other condition which makes the position of the sign no longer desirable. The Court of Claims placed great emphasis upon such facts to demonstrate the inherently temporary nature of the affixation of the signs therein. Alabama Displays, Inc. v. United States, 507 F.2d at 845; National Advertising Co. v. United States, 507 F.2d at 851-852. Such court also used such facts to distinguish the signs therein from the pilings which were used to secure a floating dock and which we found were not tangible personal property. Estate of Shirley Morgan, supra.

11. In our judgment, the application of these criteria to the facts of this case leads to the conclusion that the outdoor advertising signs of the petitioner were not inherently permanent. They were not expected to last indefinitely; inevitably, they would have to be moved in a relatively short time; and they could be removed easily. Such signs are manifestly less permanent in nature than other properties which the courts have found to be tangible personal property for purposes of the investment credit: King Radio Corp. v. United States, supra; Minot Federal Savings Loan Assn. v. United States, 435 F.2d 1368 (8th Cir. 1970) (movable partition system fastened to the floor and ceiling by screws or masonry nails); Marineland of the Pacific, Inc., T.C. Memo. 1975-288 (338-foot sky tower); Joseph B. Weirick, 62 T.C. 446 (1974) (holddown towers for a ski lift and its cable support as well as wooden passenger ramps); Joseph Henry Moore, 58 T.C. 1045 (1972) (mobile homes placed on concrete blocks); Estate of Shirley Morgan, 52 T.C. 478 (1969) (a floating dock held down by pilings). Moreover, the Income Tax Regulations specifically provide that "neon and other signs, which * * * [are] contained in or attached to a building" are tangible personal property for purposes of the credit allowed by section 38. Sec. 1.48-1(c), Income Tax Regs. Certainly, such signs may be constructed, designed, and affixed in a much more permanent fashion than the signs of the petitioner.

JUDGMENT

SIMPSON, Judge:

The *Commissioner* determined the following deficiencies in the petitioners' Federal corporate income taxes: *Petitioner Docket No. Year Deficiency Whiteco Industries , Inc* . ..... 3918-73 1967 $23,851.14 1968 36,299.98 *Whiteco Industries , Inc* ., and Subsidiaries .... 3919-73 1969 213,169.00 *Whiteco Industries , Inc* ., and Subsidiaries .... 7188-74 1970 32,979.65 1971 58,229.23 Two issues have been settled; the only issue remaining for decision is whether certain outdoor advertising signs may qualify for the investment credit of section 38 of the Internal Revenue Code of 1954.

All statutory references are to the Internal Revenue Code of 1954 as in effect during the years at issue.

FINDINGS OF FACT

Some of the facts have been stipulated, and those facts are so found.

The petitioner, *Whiteco Industries , Inc* . (*Whiteco*), was a Nebraska corporation, with its principal office in Merrillville, Ind., at the time of filing its petition herein. It filed its Federal corporate income *tax* return for the year 1967 with the District Director of Internal Revenue, Indianapolis, Ind., and its return for 1968 with the Internal Revenue Service Center, Cincinnati, Ohio. During 1967, 1968, and part of 1969, *Whiteco* was named White Advertising Co.

The petitioners, *Whiteco Industries , Inc* ., and Subsidiaries, were an affiliated group of corporations, whose common parent was *Whiteco* . They filed consolidated income *tax* returns for 1969, 1970, and 1971 with the Internal Revenue Service Center, Cincinnati, Ohio. *Whiteco* and *Whiteco Industries , Inc* ., and Subsidiaries will be referred to as the petitioner.

The petitioner presently and during all of the taxable years here involved was engaged in the business of providing outdoor advertising for its customers by the use of outdoor advertising signs, which were placed along major highways and roads. Generally, the signs were erected on property which was not owned by the petitioner but which was leased from unrelated persons who owned land along the interstate highway system, the Federal-aid primary highway system, and other major roadways.

A sign assembly consists of a sign face attached to a structure of wooden poles and "stringers." The following is a description of each component of the sign assembly, its function, and installation:

The Sign Face

The petitioner's sign faces vary in size, ranging from 4 x 10 feet to 24 x 100 feet. The average size is between 32 to 40 feet in width and between 12 to 14 feet in height. The sign face is made from exterior grade plywood, of medium density, cut in standard size sheets of either 4 x 10 feet or 4 x 8 feet, and is 5/16 of an inch in depth. At the petitioner's plant, each panel of plywood is given a coating of background paint, which is then baked in. Next, the copy is glued to the face. The letters and figures are cut from a vinyl material and then glued and baked on the enamel face. This vinyl material may be reflective or nonreflective. The reflective material is Scotch-lite, which reflects back to the motorist when his lights shine upon it. After the advertising material has been applied to the sign panels, the petitioner ships these individual panels to a regional office, which will truck such panels to the sign location, where the rest of the sign face structure has already been constructed. The individual sign panels are then nailed to the sign structure by 7 or 8 penny boxed galvanized nails.

The "Stringers"

The sign face panels are nailed into boards, called "stringers," which have been nailed horizontally to wooden poles. The stringers form the frame and support for the sign face. They are pieces of pine wood, which have been treated with preservatives, and they are used in sizes of either 2 x 4 inches or 2 x 6 inches. The stringers are nailed to the poles with 40- D casehardened, ringshank nails. The number of stringers will vary with the distance between the top and bottom of the sign frame to be constructed. There may be as few as 3 rows or as many as 11 rows of stringers, and they are spaced from 24 to 42 inches apart.

The Poles

The poles used to support the petitioner's signs are made from southern pine which has been treated with pentachlorophenol for preservative purposes. The number and size of poles used will vary depending on the size of the face and how high the sign will have to be so that it can be seen by motorists without obstruction. The number of poles used will vary from 1 to 20 poles. The poles vary in length from 20 to 55 feet. The diameter of all poles at their top, regardless of their other measurements, is the same, 6 or 7 inches. However, the circumference of the poles, measured 6 feet from the bottom, varies from 23 to 40 inches, depending on the length of the pole. The poles are placed vertically into the ground, at a depth which will vary with the length of the pole. A 20-foot pole, the smallest size used by the petitioner, will be placed 5 feet into the ground, while the largest pole, a 55- foot pole, will go 10 feet underground. The holes for the poles are dug by a truck, which contains a combination digger and boom. The digger drills a hole from 2 to 4 inches larger than the circumference of the pole. Once the pole is lifted up and placed in the hole by the boom, it is cemented into place by either wet cement or "sacrete," a dry cement mix. The cement forms a ring around the pole, which is approximately 2 to 4 inches thick. The sacrete, or dry cement mix in a bag, is used for smaller poles, when it is not economical to bring in a ready-mix truck and use wet cement. The smaller poles will each use about three to four 90- pound bags of sacrete. When wet cement is used, each hole requires approximately half a yard of concrete.

Lights

Some of the petitioner's signs are illuminated by electric lights. The lights are of the metal arc type and are attached to the signs by means of a conduit structure. The petitioner's illuminated signs do not have independent power sources; rather, electricity is obtained from the overhead lines of the utility company in the area.

Generally, the petitioner's signs are constructed in the manner described in the preceding paragraphs. However, in rare situations, the sign is braced by an A frame, which consists of two-by-fours, or two-by-sixes, placed behind the sign structure at a 45-degree angle and anchored to the ground.

The signs are constructed, erected, and maintained by the petitioner, or on its behalf, under contracts between the petitioner and its customers. The petitioner does not make a business practice of selling signs to advertisers. The petitioner retains ownership of its signs, even in the rare instances where signs are put upon sites owned or leased by the advertisers.

During 1967 through 1971, it was the petitioner's practice to construct signs only after a contract had been entered into with an advertiser.

During the taxable years at issue, the petitioner's contracts with advertisers generally ran for periods of between 3 to 5 years. In many cases, the petitioner renews its contracts with its advertisers. While the petitioner generally reuses the same location, it does not reuse the same sign face. A new sign face is always constructed, which may contain some changes in the copy of the sign. The petitioner may be able to reuse some parts of the sign assembly, although some alterations may be necessary. Rotten, damaged, or decayed stringers are replaced; and poles are replaced, or straightened and recemented, as necessary.

The petitioner can, and does in fact, move and remove its signs in a number of situations. Some of the petitioner's agreements with advertisers specifically require the petitioner to move the signs to new locations, in the event the view of the sign from the road becomes obstructed. The petitioner also moves signs from one location to another when a location is no longer available because, for example, a change takes place in the ownership of the leased property. In addition, it is relatively common for a landowner to insist on, and for the petitioner to agree to, a termination provision which requires the petitioner to move its sign in the event the owner of the land develops it.

Taking apart and moving the sign and its supports is a relatively quick and easy process. The petitioner can remove the sign face simply by using a hammer and withdrawing the nails holding the face onto the stringers. The stringers are removed by using a sledge hammer or an ax to strike the stringer, thereby knocking out, partly or completely, the nails holding the stringers to the poles. If the stringer is not completely knocked clear of the pole, an ax is used to break the nail attaching it to the pole. After the sign face and stringers are removed, the petitioner uses a truck to bump the poles slightly, thereby breaking the concrete surrounding the pole and the suction with the ground. The petitioner then hooks on to the pole with a winch, contained on the truck, and pulls it from the ground. For larger poles, sometimes the petitioner will drill a hole alongside the pole, using a drill attached to the same truck, to break the suction and aid in the removal. On rare occasions, the petitioner will cut the pole at or below ground level and fill it in. The process of removing the poles for a 40-foot sign takes only an hour or an hour and a half.

When a sign has been removed, much of it is reused. The only necessary wastage is that part of the pole surrounded by concrete. However, such wastage consumes only a small part of the whole pole, and the balance of the pole is reused for a smaller sign. In addition, the sign face will be wasted only if a sign is moved at the expiration of the contract with an advertiser. Occasionally, it may be impossible to reuse poles and stringers because of deterioration due to the weather.

The following table sets forth by year the amounts of the petitioner's investment in new advertising signs and their useful lives: *Whiteco Industries , Inc . Year Month Life (years) Investment* 1967 ..... June ..... 5 $51,318.62 July ..... 4-5 47,965.55 August ..... 5 44,562.73 September ..... 5 40,287.39 October 5 55,465.57

November ..... 4-5 72,820.28 December ..... 4-5 88,204.84 1968 ..... January ..... 4-5 41,046.71 February ..... 4-5 73,054.57 March ..... 4-5 77,483.12 6 1,779.78 April ..... 4-5 68,102.40 May ..... 4-5 51,525.60 June ..... 4-5 70,287.50 6 1,702.26 July ..... 4-5 46,258.11 August ..... 4-5 80,437.52 September ..... 4-5 57,910.41 October ..... 4-5 84,320.10 November ..... 4-5 52,903.19 December ..... 4-5 74,671.73 1969 ..... January ..... 4-5 37,179.38 February ..... 4-5 49,113.69 March ..... 4-5 42,626.05 April ..... 4-5 69,442.67 May ..... 4-5 89,718.57 June ..... 4-5 59,896.56 July ..... 4-5 102,813.70 1971 ..... July ..... 3-4 14,696.45 5-6 118,437.24 August ..... 3-4 16,143.66 5-6 58,869.98 September ..... 3-4 10,430.30 5-6 87,161.39 October ..... 3-4 5,716.06 5-6 86,560.60 November ..... 3-4 3,825.13 5-6 223,889.67 December ..... 3-4 35,023.35 5-6 150,776.84 *White Advertising (Ohio)* 1971 July ..... 5 62,459.29 August ..... 4 734.69 5 16,115.28 September ..... 5 7,631.92 October ..... 5 $8,493.16 November ..... 4 3,285.68 5 14,861.65 December 3 2,146.37 5 16,868.79

OPINION

We must decide whether the petitioner's outdoor advertising signs may qualify for the investment credit of section 38.

Property can qualify for the investment credit only if it constitutes "section 38 property." Such term is defined in section 48(a)(1), which provides in relevant part:

(a) SECTION 38 PROPERTY. —

(1) IN GENERAL. — * * * the term "section 38 property" means —

(A) tangible personal property, or

(B) other tangible property (not including a building and its structural components) but only if such property —

(i) is used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, * * *

The petitioner argues that the outdoor advertising signs qualify for the investment credit either as "tangible personal property" within the meaning of section 48(a)(1)(A) or as "other tangible property" within the meaning of section 48(a)(1)(B). We hold that the signs constitute "tangible personal property." In light of our holding, we do not address the petitioner's alternative contention.

Although this *Court* has not ruled on the type of property in issue herein, the *Court* of Claims recently held, in two companion cases, Alabama Displays, Inc. v. United States, 507 F.2d 844 (1974), and National Advertising Co. v. United States, 507 F.2d 850 (1974), that outdoor advertising signs, indistinguishable from the ones before us, constitute tangible personal property. We believe the result reached by the *Court* of Claims is sound,

and for the reasons set forth hereinafter, we reach the same result.

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 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). * * * [H. Rept. No. 1447, 87th Cong., 2d Sess. (1962), 1962-3 C.B. 405, 515-516; S. Rept. No. 1881, 87th Cong., 2d Sess. (1962), 1962-3 C.B. 707, 858.]

Thus, all tangible property constitutes tangible personal property unless it is excluded because it is land or an improvement thereto. A building is given as an example of an improvement, but the common characteristic which is attributed to improvements is that they are "inherently permanent structures." Section 1.48-1(c), Income *Tax* Regs., adopts the same definition of tangible personal property as that given in the technical explanations to the committee reports, and the regulations characterize improvements as "inherently permanent structures." Accordingly, as both parties recognize, resolution of the issue before us turns on whether the petitioner's outdoor advertising signs are "inherently permanent structures."

Sec. 1.48-1(c), Income *Tax* Regs., in relevant part, provides:
(c) *Definition of tangible personal property*. * * * For purposes of this section, the term "tangible personal property" means any tangible property except land and improvements thereto, such as buildings or *other inherently permanent structures* (including items which are structural components of such buildings or structures). * * * [Emphasis supplied.]

The term "inherently permanent structure" does not describe a clearly recognizable or defined class of property. The committee report also states: "Tangible personal property is not intended to be defined narrowly here, nor to necessarily follow the rules of State law." H. Rept. No. 1447, *supra*, 1962-3 C.B. at 415. Thus, although under State law, fixation to the land is a basis for distinguishing personal property from other property, such basis is not to be relied upon for purposes of deciding what property may qualify for the investment credit. Such a rule is illustrated by the following statement in the committee report:

Assets accessory to the operation of a business, such as machinery, printing presses, transportation or office equipment, refrigerators, individual air-conditioning units, grocery counters, testing equipment, display racks and shelves, etc., generally constitute tangible personal property for purposes of section 48, *even though such assets may be termed fixtures under local law*. * * * [S. Rept. No. 1881, *supra*, 1962-3 C.B. at 858; emphasis supplied.]

See also H. Rept. No. 1447, *supra*, 1962-3 C.B. at 516.

In line with such legislative history and regulations, the decided cases have held that affixation to land does not per se exclude the property from the category of tangible personal property. See Kenneth D. LaCroix, 61 T.C. 471, 488 (1974); Estate of Shirley Morgan, 52 T.C. 478, 483 (1969), affd. per curiam **448 F.2d 1397** (9th Cir. 1971). In deciding whether property is to be classified as tangible personal property for purposes of the investment credit, the courts have developed several questions to be considered:

(1) Is the property capable of being moved, and has it in fact been moved? Alabama Displays, Inc. v. United States, 507 F.2d at 849; Joseph Henry Moore, 58 T.C. 1045, 1052 (1972), affd. per curiam **489 F.2d 285** (5th Cir. 1973). The evidence clearly shows that the petitioner's signs are capable of being moved and have in fact been moved.

(2) Is the property designed or constructed to remain permanently in place? Joseph B. Weirick, 62 T.C. 446, 451 (1974); C. C. Everhart, 61 T.C. 328, 330 (1973); Beverly R. Roberts, 60 T.C. 861, 866 (1973). The evidence in this case indicates that the petitioner's signs are not designed or constructed to last permanently. They are designed or constructed to last for the term of a contract between the petitioner and one of its advertisers. On the average, the term of a contract will last only 5 years. At the end of such period, the sign structure requires substantial renovation. A new sign face must be attached, some stringers must be replaced, and poles are either replaced or straightened and recemented.

(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? Alabama Displays, Inc. v. United States, supra; Kenneth D. LaCroix, 61 T.C. at 487. The petitioner does not intend, nor could it realistically expect, the signs to remain permanently in place. The petitioner realizes that in numerous situations it may. have to move its signs at the expiration of a contract with an advertiser, or prior thereto. The signs may have to be moved because the owner of the leased land does not renew the lease or exercises his option to develop his land, or because there is a change in the location of the road or the occurrence of some other condition which makes the position of the sign no longer desirable. The *Court* of Claims placed great emphasis upon such facts to demonstrate the inherently temporary nature of the affixation of the signs therein. Alabama Displays, Inc. v. United States, 507 F.2d at 845; National Advertising Co. v. United States, 507 F.2d at 851-852. Such *court* also used such facts to distinguish the signs therein from the pilings which were used to secure a floating dock and which we found were not tangible personal property. *Estate of Shirley Morgan, supra.*

(4) How substantial a job is removal of the property and how time-consuming is it? Is it "readily removable"? Estate of Shirley Morgan, 52 T.C. at 483. The disassembly and removal of a sign is a relatively quick and easy process. Although specific figures were not supplied for the time necessary to remove the sign face and the stringers, it appears that the process may be accomplished quickly, using merely a hammer and a sledge hammer or an ax. Removal of the poles for a 40-foot sign takes only an hour or an hour and a half.

(5) How much damage will the property sustain upon its removal? King Radio Corp. v. United States, 486 F.2d 1091, 1096 (10th Cir. 1973). Much of the sign assembly is not damaged when it is moved. The only necessary wastage is that portion of the poles surrounded by concrete, but the remaining portions of the poles are used for other signs. If the sign is moved upon the expiration of a contract with an advertiser, the sign face is also replaced.

(6) What is the manner of affixation of the property to the land? *Joseph B. Weirick, supra; C. C. Everhart, supra; Beverly R. Roberts, supra*. The poles on which the petitioner's signs are mounted are placed in the ground and surrounded by concrete; yet, such poles can easily be removed from the ground, and as a matter of practice, they are so removed.

In our judgment, the application of these criteria to the facts of this case leads to the conclusion that the outdoor advertising signs of the petitioner were not inherently permanent. They were not expected to last indefinitely; inevitably, they would have to be moved in a relatively short time; and they could be removed easily. Such signs are manifestly less permanent in nature than other properties which the courts have found to be tangible personal property for purposes of the investment credit: King Radio Corp. v. United States, supra; Minot Federal Savings Loan Assn. v. United States, 435 F.2d 1368 (8th Cir. 1970) (movable partition system fastened to the floor and ceiling by screws or masonry nails); *Marineland of the Pacific, Inc .,* T.C. Memo. 1975-288 (338-foot sky tower); Joseph B. Weirick, 62 T.C. 446 (1974) (holddown towers for a ski lift and its cable support as well as wooden passenger ramps); Joseph Henry Moore, 58 T.C. 1045 (1972) (mobile homes placed on concrete blocks); Estate of Shirley Morgan, 52 T.C. 478 (1969) (a floating dock held down by pilings). Moreover, the Income *Tax* Regulations specifically provide that "neon and other signs, which * * * [are] contained in or attached to a building" are tangible personal property for purposes of the credit allowed by section 38. Sec. 1.48-1(c), Income *Tax* Regs. Certainly, such signs may be constructed, designed, and affixed in a much more permanent fashion than the signs of the petitioner.

In deciding what property qualifies for the investment credit as tangible personal property, some very subtle distinctions have been suggested. It is difficult to reconcile the position maintained by the *Commissioner* in this case with his own rulings. He has allowed property, far more inherently permanent than the petitioner's signs, to qualify: Rev. Rul. 74-602, 1974-2 C.B. 12 (gasoline storage tanks of approximately 8,000-gallon capacity (located usually below ground but some above ground and not generally moved during useful life) and associated piping in a retail gasoline station); Rev. Rul. 71-104, 1971-1 C.B. 5 (burner and 14-story preheater structure for cement kiln facility); Rev. Rul. 70-236, 1970-1 C.B. 8 (liquified petroleum gas equipment); Rev. Rul. 70-160, 1970-1 C.B. 7 (boiler facility to produce steam used in the manufacture of furniture); Rev. Rul. 70-103, 1970-1 C.B. 6 (a diesel generator, fuel tanks, exhaust equipment, a chlorinator, vault doors with combination locks, dehumidifiers, pumps, space heaters, safety doors, and louvers); Rev. Rul. 69-602, 1969-2 C.B. 6 (propane gas storage tanks and water heaters installed on customers' premises); Rev. Rul. 69-557, 1969-2 C.B. 3 (dry kiln structures to remove moisture from wood); Rev. Rul. 67-349, 1967-2 C.B. 48 (wall-to-wall carpeting installed

in guest rooms, office space, bar areas, and dining rooms of a motel); and Rev. Rul. 65-79, 1965-1 C.B. 26 (bank vault doors, night depository facilities, walk-up and drive-up teller's windows). As a *court* , we must be guided by rational principles in making our decisions, and if those items of property are to be treated as tangible personal property, we see no rational basis for disqualifying the petitioner's outdoor advertising signs.

The *Commissioner* argues that the petitioner's signs cannot qualify as tangible personal property, in any event, because the House committee report specifically excludes such outdoor advertising signs. The passage on which he relies is:

In order to qualify for the credit, property (other than tangible personal property and research or storage facilities used in the specified activities) must be used as an integral part of one or more of the specified activities. Thus, for example, section 38 property would ordinarily not include such assets as pavements, parking areas, *advertising displays,* outdoor lighting facilities, or swimming pools which, although used as a part of the overall business operation, are not used directly in the specified activities. * * * [H. Rept. No. 1447, *supra,* 1962-3 C.B. at 517; emphasis supplied.]

This same argument was rejected by the *Court* of Claims in Alabama Displays, Inc. v. United States, 507 F.2d 844 (1974). We also believe the argument is misplaced and therefore reject it.

There are a number of reasons for rejecting the Commissioner's argument. In the first place, it is not clear as to what is meant by the term "advertising displays." There is some indication that the term may have been used to refer to show windows. A spokesman for the American Retail Federation appeared before the Senate Finance Committee and urged the committee to allow the investment credit with respect to a retailer's show windows, and it may have been those show windows to which the committee meant to refer. Hearings Before the Senate Committee on Finance on H.R. 10650, 87th Cong., 2d Sess., part 3, 1019 (1962). In addition, it is not clear that the committee had in mind such property as the petitioner's signs. The committee may have intended to indicate merely that the advertising displays of a person engaged in manufacturing or production were not an integral part of his business, and the committee may not have intended to make any reference to a person who was in the advertising business. The *Court* of Claims adopted this view of the language in the legislative history. *Alabama Displays, Inc . v . United States, supra* . Moreover, the committee merely indicated that advertising displays are not ordinarily to qualify for the investment credit, but the committee may have had in mind advertising displays that were much more substantial and more permanent than the petitioner's signs. For these reasons, we are not persuaded that the committee intended to indicate that outdoor advertising signs of the type erected by the petitioner could not qualify for the investment credit.

Decisions will be entered under Rule 155.