KPMG
cutting through complexity

Catalog of Repair and Maintenance Guidance

January 2004 – July 2013

kpmg.com

Catalog of Repair and Maintenance Guidance

January 2004 – July 2013

01/20/2004

Request for Comments on Contemplated Tangible Property Regulations
Notice 2004-6

- This notice announced the government's intention to develop proposed regulations under sections 162 and 263(a) addressing costs incurred to repair, improve, or rehabilitate tangible property.
- The notice set forth the issues the regulations might address, and asked for public comment on whether the issues should be addressed and the approaches that should be taken.

08/21/2006

2006 Proposed Regulations
78 Fed Reg 48590

- This proposed regulation was the government's first attempt at developing new regulations regarding repair and maintenance costs.
- Notable was a factor-based unit of property definition, similar to the factors used in FedEx v. Commissioner.

Because the regulation was issued only in proposed form, it was never effective.

Withdrawn in 2008.

03/10/2008

2008 Proposed Regulations
73 Fed. Reg. 12838

- This proposed regulation was the government's second attempt at revising the sections 162 and 263(a) regulations, and withdrew the widely criticized 2006 proposed regulations.
- Among other changes, it replaced the factor-based unit of property definition with the functional interdependence, plant property, and network asset standards for non-building property now reflected in the 2011 temporary regulations.

Because the regulation was issued only Min proposed form, it was never effective.

Withdrawn in 2011.

04/04/2011

Wireless Telecom
IIR - Recovery Periods
Rev. Proc. 2011-22

- This revenue procedure provides a safe harbor method of accounting for determining the depreciation recovery periods of certain assets used by wireless telecommunications carriers.
- The taxpayer can specify the assets to which the safe harbor will be applied. It can be used for all or some of the taxpayer's wireless network assets for depreciation purposes (but not for any other purpose, including the repair and maintenance regulations).
- Effective for tax years ending on or vafter 12/31/2010.
- For assets placed in service in tax years ending before 12/30/2003, the taxpayer may file amended returns in lieu of a method change request to implement the safe harbor.
- For assets placed in service after 2003, an automatic change in accounting method is required in accordance with Rev. Proc. 2011-14.
- Otherwise applicable scope limitations (e.g., window periods for taxpayers under exam) are waived for the taxpayer's first two tax years ending after 12/30/2010 (i.e., for calendar year taxpayers, scope limitations are waived for 2010 and 2011).
- Changes can be made for later years, but will be subject to the applicable scope limitations.

04/04/2011

Wireline Telecom IIR - Repairs and Maintenance
Rev. Proc. 2011-27

- This revenue procedure provides two alternative safe harbors that telecom companies may use to determine whether expenditures to maintain, replace, or improve wireline network assets must be capitalized under §263(a): a network asset maintenance allowance method or a units of property method.
- Taxpayers electing the units of property method can specify which of the listed wireline units of property will be used, and must use a facts and circumstances standard for determining any other units of network property.
- Effective for tax years ending on or after 12/31/2010.
- All changes to either safe harbor require an automatic change in accounting method in accordance with Rev. Proc. 2011-14.
- Otherwise applicable scope limitations (e.g., window periods for taxpayers under exam) are waived for the taxpayer's first two tax years ending after 12/30/2010 (i.e., for calendar year taxpayers, scope limitations are waived for 2010 and 2011).
- Changes can be made for later years, but will be subject to the applicable scope limitations.

04/04/2011

Wireless Telecom IIR - Repairs and Maintenance
Rev. Proc. 2011-28

- This revenue procedure provides two alternative safe harbors that telecom companies may use to determine whether expenditures to maintain, replace, or improve wireless network assets must be capitalized under § 263(a): a network asset maintenance allowance method or a units of property method.
- Taxpayers electing the units of property method can specify which of the listed units of wireless property will be used, and must use a facts and circumstances standard for determining any other units of network property.
- Effective for tax years ending on or after 12/31/2010.
- All changes to either safe harbor require an automatic change in accounting method in accordance with Rev. Proc. 2011-14.
- Otherwise applicable scope limitations (e.g., window periods for taxpayers under exam) are waived for the taxpayer's first two tax years ending after 12/30/2010 (i.e., for calendar year taxpayers, scope limitations are waived for 2010 and 2011).
- Changes can be made for later years, but will be subject to the applicable scope limitations.

08/19/2011

Electric Transmission & Distribution (T&D) IIR
Rev. Proc. 2011-43

- This revenue procedure provides a safe harbor method of accounting that taxpayers may use to determine whether expenditures to maintain, replace, or improve electric T&D property must be capitalized.
- The safe harbor includes mandatory definitions of units of property for both linear assets (e.g., lines and poles) and non-linear assets (e.g., substation assets), and a mandatory percentage-based standard applicable to linear property only.
- Unlike the IIRs for telecommunications assets, no selective application among the listed units of property is allowed.
- Effective for tax years ending on or after 12/31/2010.
- Electing the safe harbor requires an automatic change in accounting method in accordance with Rev. Proc. 2011-14.
- Otherwise applicable scope limitations originally were waived for the taxpayer's first two tax years ending after 12/30/2010 (i.e., for calendar year taxpayers, scope limitations are waived for 2010 and 2011).
- Method changes can be made for later years, but will be subject to the applicable scope limitations.
- Statistical sampling and extrapolation are specifically permitted in computing the section 481(a) adjustment.

Rev. Proc. 2012-19 waives the scope limitations for one additional year (i.e., for calendar year taxpayers, through 2012).

11/25/2011

LB&I Directive Regarding Taxpayers Eligible to Adopt T&D Safe Harbor
LB&I-04-1111-019

LB&I examination teams are provided instructions on how to resolve examinations of costs to repair or maintain electric T&D network assets in light of the issuance of Rev. Proc. 2011-43.

- For original returns filed for tax years ending before 12/31/2010, exam teams are directed to discontinue exams involving whether costs to repair, replace, or improve electric T&D property must be capitalized under section 263(a).
- For the taxpayer's first or second tax year ending after 12/31/2010, if the taxpayer has not yet adopted the T&D safe harbor, exam teams are directed to discontinue examining the repair versus expense issue for T&D property.
- For taxpayers who have filed a Form 3115 to adopt the safe harbor, exam teams are to ensure compliance with Rev. Proc. 2011-43.

The stand-down was extended by one year on 05/02/2013, to apply to the taxpayer's first three tax years ending after 12/30/2010.

12/27/2011

2011 Temporary Regulations
76 Fed. Reg. 81060 (TD 9564)

- These are the 2011 "temporary" or "repair" regulations upon which everyone is focused.
- Unlike the 2006 and 2008 proposals, these rules were both temporary and proposed, meaning they were immediately effective as "the law."
- As temporary regulations, the government must finalize the rules within three years of publication, or they will cease to be effective.

When originally published, the temporary regulations were effective for the taxpayer's first taxable year beginning on or after January 1, 2012.

The original effective date was amended in December 2012. As amended, the temporary regulations become mandatory for the taxpayer's first tax year beginning on or after 1/1/2014 (unless they are replaced by final regulations before then), but taxpayers may apply them for 2012 and 2013.

01/23/2012

LB&I Directive Regarding Examinations of Depreciation Deductions for Telecom Wireless Network Assets
LB&I-04-1111-020

LB&I examination teams provided with direction regarding the examination of depreciation deductions associated with wireless telecommunications property in light of Rev. Proc. 2011-22.

- For original returns filed for tax years ending before 12/31/2010, exam teams must discontinue examinations of depreciation deductions associated with wireless network assets. The taxpayer is provided two years to adopt the safe harbor recovery periods provided in Rev. Proc. 2011-22.
- For taxable years ending on or after 12/31/2010, exam teams are instructed to determine whether the taxpayer elected the safe harbor recovery periods provided in Rev. Proc. 2011-22 for all of its eligible assets. If so, the exam team is to accept the depreciation deduction as filed.
- If the taxpayer does not elect the safe harbor recovery periods for all of its eligible wireless assets for its first or second tax year ending after 12/30/2010, the examination is to proceed under guidelines set out in the directive.
- One of these guidelines provides that if the taxpayer has not elected the safe harbor for one or more of its wireless assets, the examination team is not allowed to accept a depreciation deduction based on an asset description for which the recovery period is shorter than the recovery period found in the safe harbor.

01/23/2012

LB&I Directive Regarding Examinations of Telecom Network Assets Repair Costs
LB&I-4-1111-021

LB&I examination teams are provided instructions on how to resolve pending examinations of wireline and wireless telecommunications assets in light of the issuance of Rev. Proc. 2011-27 and Rev. Proc. 2011-28.

- For original returns filed for tax years ending before 12/31/2010, exam teams must discontinue examinations involving whether costs to repair, replace, or improve wireline or wireless telecom network assets must be capitalized under section 263(a). The taxpayer is provided two years to adopt one of the available safe harbors.
- For taxable years ending on or after 12/31/2010, exam teams are instructed to determine whether the taxpayer elected one of the safe harbors provided in either Rev. Proc. 2011-27 or Rev. Proc. 2011-28. If so, the directive provides specific instructions for examining the taxpayer's implementation of the safe harbors.
- If the taxpayer does not elect one of the safe harbors for its first or second tax year ending after 12/30/2010, the exam team is to examine the issue under applicable legal authority if the repair deduction is material.

03/07/2012

Transition Rules for Implementing Temporary Regulations: Acquisition Costs and Repair and Maintenance Costs Rev. Proc. 2012-19

This revenue procedure provides the procedures for making automatic accounting method changes for costs to acquire and produce or to repair and maintain property under the 2011 temporary regulations.

- Effective for tax years beginning on or after 1/1/2012.
- Scope limitations (e.g., window periods for taxpayers under exam) are waived only for the taxpayer's first two tax years beginning after 12/31/2011 (i.e., for calendar year taxpayers, only for 2012 and 2013).
- Method changes may be made for later years, but scope limitations will apply.
- Most accounting method changes described in this revenue procedure are made using a full section 481(a) adjustment.
- Some method changes (including those for materials and supplies, rotables, and de minimis costs) are made using a section 481(a) adjustment that takes into account only amounts paid or incurred in tax years beginning on or after 1/1/2012.
- Statistical sampling specifically permitted in computing the section 481(a) adjustment for some, but not all, method changes governed by Rev. Proc. 2012-19 (see chart).

03/07/2012

Transition Rules for Implementing Temporary Regulations: GAA/Disposition Rules
Rev. Proc. 2012-20

This revenue procedure provides the procedures for making automatic accounting method changes relating to the "GAA" and disposition rules under the 2011 temporary regulations.

- Effective for tax years beginning on or after 1/1/2012.
- Scope limitations (e.g., window periods for taxpayers under exam) are waived only for the taxpayer's first two tax years beginning after 12/31/2011 (i.e., for calendar year taxpayers, only for 2012 and 2013).
- Except for certain changes (such as late GAA elections), method changes may be made for later years, but scope limitations will apply.
- Most accounting method changes described in this revenue procedure are made using a full section 481(a) adjustment.
- Some changes (generally changes from one permissible method of depreciation to another permissible method of depreciation, as well as certain late GAA elections) are made using a modified cut-off method rather than a full section 481(a) adjustment (see chart).
- Statistical sampling is specifically permitted in calculating the required section 481(a) adjustment for relatively few of the method changes governed by Rev. Proc. 2012-20 (see chart).
- Certain GAA elections (including "late GAA elections" and certain "late" elections to recognize gain or loss on the disposition of items from a GAA) may be made only for the taxpayer's first or second tax year beginning after 12/31/2011.

03/15/2012

LB&I Exam Stand-Down Directive
LB&I-4-0312-004

LB&I examination teams are provided instructions on how to resolve pending examinations of costs incurred to maintain, replace, or improve tangible property (and correlative issues) in light of the publication of the temporary repair regulations.

- Exam teams must discontinue examinations of issues within the scope of the directive for tax years beginning before January 1, 2012.
- Exam teams also must not examine issues within the scope of the directive for tax years beginning on or after 1/1/2012 but before 1/1/2014, but may conduct a risk assessment if the taxpayer files a Form 3115 with respect to costs otherwise subject to the stand-down during this period.
- Exam teams are to apply the regulations in effect and follow normal exam procedures for tax years beginning on or after January 1, 2014.
- The stand-down applies only to costs incurred to maintain, replace, or improve tangible property and certain correlative issues involving dispositions of building components or tangible depreciable assets.
- The stand-down does not apply where the government has issued specific guidance other than the temporary regulations (such as an industry specific IIR).

Clarified in 2013 to state the original two-year stand-down period will not be extended.

09/04/2012

Extension of Scope Limitation Waiver for Adoption of Electric T&D Safe Harbor
Rev. Proc. 2012-39

This revenue procedure waives the otherwise applicable scope limitations for one additional year for taxpayers adopting the electric T&D safe harbor.

- Effective for Form 3115s filed on or after 9/4/2012, applicable scope limitations (such as window periods for taxpayers under exam) are waived for taxpayers adopting electric utility T&D safe harbor for their first, second, or third tax years ending after 12/30/2010 (i.e., extends the scope limitation waiver for method changes made for 2012 tax years).
- Taxpayers can make the safe harbor election for later years, but must comply with the applicable scope limitations of Rev. Proc. 2011-14.

11/20/2012

Announcement of Intention to Modify Temporary Regulations' Effective Date
Notice 2012-73

- The government announced its intention to modify the mandatory effective date of the temporary regulations from years beginning on or after 1/1/2012 to those beginning on or after 1/1/2014, while allowing the regulations to be applied voluntarily during 2012 and 2013.
- The announcement also identified aspects of the temporary regulations likely to be modified by the final regulations, including the de minimis rule, the treatment of dispositions, and the routine maintenance safe harbor.

Not applicable; no formal changes made to regulations.

12/17/2012

Amended Temp Reg Effective Date
77 Fed. Reg. 74583
Announcement 2012-73

Formally changed the effective date of the temporary regulations, as announced in Notice 2012-73.

- As of 12/17/2012, the mandatory effective date of the 2011 temporary regulations is delayed until tax years beginning on or after 1/1/2014.
- Taxpayers may elect to apply the 2011 temporary regulations for their 2012 or 2013 tax years.

03/22/2013

Revised LB&I Stand Down Directive
LB&I-04-0313-001

Instructs LB&I exam teams that the current stand down on examinations of certain repair and maintenance issues will not be extended beyond 2013.

- Instructions to exam teams are effective immediately.
- Directive instructs exam teams to perform a risk assessment for any method change made in 2012 or 2013 tax years that relate to repair and maintenance costs (regardless whether the taxpayer filed a Form 3115), but otherwise the instructions essentially are unchanged from the 3/15/2012 LB&I directive.

04/30/2013

Electric Generation IIR
Rev. Proc. 2013-24

- This revenue procedure provides elective definitions of units of property and major components taxpayers may use to determine whether expenditures to maintain, replace, or improve steam or electric power generation property must be capitalized under § 263(a).
- Taxpayers can specify which of the identified units of property will be used, and must use a facts and circumstances standard to determine any other units of property.

- Effective for tax years ending on or after 12/31/2012.
- Use of any or all of the listed units of property or major components requires an automatic change in accounting method in accordance with Rev.Proc.2011-14.
- Otherwise applicable scope limitations (such as window periods for taxpayers under exam) are waived for the taxpayer's first three tax years ending after 12/30/2012 (i.e., for calendar year taxpayers, scope limitations are waived for 2012, 2013, and 2014).
- Changes can be made for later years, but will be subject to the applicable scope limitations.
- The method change is made using a section 481(a) adjustment, but the entire adjustment must be taken into account in the year of change (i.e., no "spread period").
- Extrapolation is specifically allowed in computing the section 481(a) adjustment required by the method change, but only using the extrapolation techniques set forth in the revenue procedure.

05/02/2013

Extension of LB&I Stand-Down for Taxpayers Eligible to Adopt T&D Safe Harbor
LB&I 04-0513-003

This directive extends by an additional year LB&I's original two-year stand down of audits of electric T&D repair and maintenance costs. This was in response to the additional year provided to taxpayers to adopt the electric T&D safe harbor without regard to the usual scope limitations (i.e., window periods for taxpayers under audit).

- The LB&I stand down on examinations of repair and maintenance costs related to electric T&D assets is extended to the taxpayer's third tax year ending after 12/30/2010.
- The instructions given to exam teams in the original 11/25/11 stand-down directive are otherwise unchanged.

Item

Description

Effective Date / Filing Deadlines

Subsequent Amendments