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March 23, 2012

BY FACSIMILE (202) 283-8406
AND U.S. MAIL

Internal Revenue Service
Office of Prefiling and Technical Services
Large and Mid-Size Business Division LM:PFT
Mint Building, 3rd Floor M3-420
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: IIR Request for Retail Industry Guidance Regarding
Tangible Personal Property Expenditures

Dear Sir or Madam:

On behalf of the Retail Industry Leaders Association (RILA), I write to submit an Industry Issue Resolution (IIR) request in accordance with Rev. Proc. 2003-36, 2003-1 C.B. 859 and with respect to the temporary regulations published by the Treasury Department and the Internal Revenue Service (Service) on December 27, 2011, regarding the deduction and capitalization of expenditures relating to tangible personal property (herein referred to as the “Temporary Regulations”).¹ The present request renews and expands RILA’s 2010 IIR request, which the Service deferred in anticipation of the Temporary Regulations.²

By way of background, RILA is the trade association of the world’s largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

In accordance with Section 7 of Rev. Proc. 2003-36, the following specific information is provided:

- A. Issue – RILA urges the Service to undertake guidance that would clarify the Temporary Regulations with respect to retailers, including (1) the application of the “unit of

¹ RIN 1545-BJ93, 76 Fed. Reg. 81060 (Dec. 27, 2011); RIN 1545-BE18, 76 Fed. Reg. 81128 (Dec. 27, 2011).

² A copy of RILA’s initial IIR request, dated February 26, 2010, is attached and was submitted pursuant to the solicitation included in Industry Director’s Directive #1 dated January 22, 2010, Subject: Tier I Industry Director’s Directive on the Planning and Examination of Repairs vs. Capitalization Change in Accounting Methods (CAM) #1. Also attached is a copy of the Service’s letter of August 4, 2010.

property” definition as applied to buildings and structural components, (2) the treatment of “refresh” expenses as illustrated in Examples 6, 7 and 8 of Treas. Reg. § 1.263(a)-3T(h)(4), (3) the rules for general maintenance and repair expenditures, and (4) rules regarding the adaptation of property to a new or different use.

B. Appropriateness for an IIR – Pursuant to Section 3.01 of Rev. Proc. 2003-36, an issue is considered appropriate for the IIR Program if it possesses two or more of the following characteristics. The repairs versus capitalization issue possesses all of the characteristics:

- The proper tax treatment of a common factual situation is uncertain – The proper tax treatment of repair and remodel expenditures by the retail industry is a common, heavily factual issue that has resulted in significant tax uncertainties.
- The uncertainty results in frequent and often repetitive, examinations of the same issue – The tax treatment relating to repairs versus capitalization has often resulted in frequent, repetitive examinations of the same repair and remodel issues year after year and has led to inconsistent treatment of retail taxpayers possessing similar factual situations.
- The uncertainty results in taxpayer burden – The uncertainty is a significant burden on retail businesses, consuming substantial amounts of time and funds of both RILA members and the Service, resulting in the inefficient use of resources by taxpayers and government.
- The issue is significant and effects a large number of taxpayers, either within an industry or across industry lines – The tax treatment of repair, refresh and remodel expenditures affects virtually every retail business and translates into significant costs and resource allocations each year.
- The issue requires extensive factual development and understanding of industry practices and views concerning the issue would assist the Service in determining the proper tax treatment – In light of the variation in retail facilities, which makes the treatment of repair, refresh, and remodel expenditures inherently fact specific, a common understanding of industry practices and views on these types of expenditures, and why and when they are incurred, would provide invaluable insight to the government as it develops appropriate guidance.

C. The need for guidance – We believe that guidance on repairs versus capitalization of expenditures in the retail context is urgently needed for the retail businesses in light of the uncertainties in the Temporary Regulations and their effect on retailers’ ability to plan their repairs and capital investments efficiently and report them properly. Members of the retail industry wish to avoid controversy with the Service and comply with well thought out rules that will apply to similarly situated taxpayers. Guidance in this area will likely reduce taxpayer and government burden and controversy.

Internal Revenue Service
Office of Prefiling and Technical Services
March 23, 2012
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RILA would welcome the opportunity to represent the retail industry and provide information that will assist the Service and Treasury Department in reaching an appropriate resolution of the repairs versus capitalization issues affecting the retail industry. I will be RILA's point of contact for this request and can be reached at (703) 600-2044 or kirt.johnson@rila.org.

Thank you for your consideration of this important IIR request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kirt Johnson", with a long horizontal flourish extending to the right.

Kirt Johnson
Vice President, Tax Policy

Attachments



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February 26, 2010

BY FACSIMILE (202) 283-8406
AND U.S. MAIL

Internal Revenue Service
Office of Prefiling and Technical Services
Large and Mid-Size Business Division LM:PFT
Mint Building, 3rd Floor M3-420
1111 Constitution Avenue, N.W.
Washington, DC 20224

RE: Request for Industry Issue Resolution Program Guidance
Repairs vs. Capitalization

Dear Sir or Madam:

On behalf of the Retail Industry Leaders Association (RILA), I write to submit an Industry Issue Resolution (IIR) request pursuant to the solicitation included in Industry Director's Directive #1 dated January 22, 2010, Subject: Tier I Industry Director's Directive on the Planning and Examination of Repairs vs. Capitalization Change in Accounting Methods (CAM) #1 and in accordance with Rev Proc 2003-36, 2003-1 C.B. 859. RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

In accordance with Section 7 of Rev. Proc. 2003-36, the following specific information is provided:

- A. Issue – RILA urges the Internal Revenue Service (IRS) to undertake guidance that would clarify the repairs vs. capitalization rules with respect to retailers, including the application of the “unit of property” issue, the treatment of renewal and remodel expenses, and the rules for general maintenance and repair expenditures.
- B. Appropriateness for an IIR – Pursuant to Section 3.01 of Rev Proc 2003-36, an issue is considered appropriate for the IIR Program if it possesses two or more of the following characteristics. The repairs vs. capitalization issue possesses all of the characteristics, which likely contributed in part to this issue being recently identified as an LMSB Tier I issue:
 - The proper tax treatment of a common factual situation is uncertain – The proper tax treatment of repair and remodel expenditures by the retail industry is a common, heavily factual issue that has resulted in significant tax uncertainties.

- The uncertainty results in frequent and often repetitive, examinations of the same issue – The tax treatment relating to repairs vs. capitalization has often resulted in frequent, repetitive examinations of the same repair and remodel issues year after year and has led to inconsistent treatment of retail taxpayers possessing similar factual situations.
- The uncertainty results in taxpayer burden – The uncertainty is a significant burden on retail businesses, consuming substantial amounts of time and funds of both RILA members and the IRS, resulting in the inefficient use of resources by taxpayers and government.
- The issue is significant and effects a large number of taxpayers, either within an industry or across industry lines – The tax treatment of repair and remodel expenditures affects virtually every retail business and translates into a significant costs and resource allocations each year.
- The issue requires extensive factual development and understanding of industry practices and views concerning the issue would assist the IRS in determining the proper tax treatment – In light of the variation in retail facilities, which makes the treatment of repair and remodel expenditures inherently fact specific, a common understanding of industry practices and views on these expenses would provide invaluable insight to the government as it develops appropriate guidance.

C. The need for guidance – We believe that guidance on repairs vs. capitalization of expenditures in the retail context is urgently needed for the retail businesses to plan their repairs and capital investments efficiently and report them properly. Members of the retail industry wish to avoid controversy with the IRS and comply with well thought out rules that will apply to similarly situated taxpayers. Guidance in this area will likely reduce taxpayer and government burden and controversy.

RILA would welcome the opportunity to represent the retail industry and provide information that will assist the IRS and Treasury Department in reaching an appropriate resolution of the repairs vs. capitalization issue. I will be RILA's point of contact for this request and can be reached at (703) 600-2041 or mark.warren@rila.org.

Thank you for your consideration of this important IIR request.

Sincerely,



Mark E. Warren
Vice President, Tax & Finance

cc: Sergio E. Arellano. Director Retail, Food Pharmaceuticals & Healthcare



LARGE AND MID-SIZE
BUSINESS DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 4, 2010

Mark E. Warren
Vice President, Tax and Finance
RILA
1700 North Moore Street
Suite 2250
Arlington, VA 22209

Dear Mr. Warren:

On February 26, 2010, you submitted a request that the Industry Issue Resolution (IIR) Program address the repairs versus capitalization rules with respect to retailers, including the application of the "unit of property" issue, the treatment of renewal and remodel expenses, and the rules for general maintenance and repair expenditures. On July 8, 2010, you requested a status update of your submission. Thank you for expressing an interest in the IIR Program. Your submission demonstrates a commitment to working with the Internal Revenue Service to improve tax administration.

The current Treasury-IRS Priority Guidance Plan includes a regulation project that will resolve at least some of the issues raised in your IIR proposal. Accordingly, we are deferring consideration of your submission until the regulations are published. Thank you for your patience in this matter.

If you have any questions regarding the above, please do not hesitate to call David Lindenbaum, IIR Coordinator, at (202) 283-8407.

Sincerely,

A handwritten signature in blue ink that reads "Sevita Lough".

for

Cheryl Claybough
Director,
Pre-filing and Technical Guidance