

WNTS Insight

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IRS issues guidance related to final "repairs" regulations and delay of effective date

In brief

The IRS on November 20 issued Notice 2012-73, alerting taxpayers that final regulations regarding deduction and capitalization of expenditures related to tangible property (the final repairs regulations) are expected to be released in 2013. The Notice states that the IRS and Treasury Department anticipate that the final repairs regulations will contain changes from the temporary regulations issued on December 23, 2011 (the temporary repairs regulations).

The Notice also states that the final repairs regulations will be effective for tax years beginning on or after January 1, 2014. Taxpayers will be permitted to apply the temporary repairs regulations (the effective date of which will be changed to tax years beginning on or after January 1, 2014), or the final repairs regulations, for tax years beginning on or after January 1, 2012, and before the applicability date of the final regulations.

Observation: The delay in the effective date of the temporary repairs regulations until tax years beginning on or after January 1, 2014, with the possibility of early adoption in tax years beginning on or after January 1, 2012, is a significant change in the temporary repairs regulations' effective date. This change will allow taxpayers to early adopt favorable portions of the temporary repairs regulations and will allow additional time to evaluate the impact of the temporary repairs regulations and to develop an implementation plan.



Background

On December 23, 2011, the IRS issued the temporary repairs regulations, generally effective for tax years beginning on or after January 1, 2012. Those regulations provided broad guidance for expenditures related to tangible property, including materials and supplies, acquisition and production of new units of property, repairs, routine maintenance, improvements to existing units of property, and dispositions of tangible property. The temporary repairs regulations also provided guidance on accounting for amounts deducted in accordance with a taxpayer's book capitalization policy (the "de minimis rule"). For prior discussion of the temporary regulations, see WNTS Insight, "[The tangible property repair regulations: effective dates, units of property, and dispositions](#)," January 4, 2012, and WNTS Insight, "[The tangible property repair regulations: Acquisition or improvement of property](#)," January 5, 2012.

Notice 2012-73

The IRS and Treasury held a public hearing on May 9, 2012, and received numerous written comments, as well as numerous informal comments, from the tax community with respect to the temporary repairs regulations. As a result of the numerous comments, the IRS issued Notice 2012-73, notifying taxpayers that certain sections of the temporary regulations may be revised in a manner that will affect, and perhaps simplify, the taxpayers' implementation of the rules when the final repairs regulations are issued. The IRS specifically identified the de minimis rule, the dispositions rules, and the routine maintenance safe harbor as areas where the IRS and Treasury Department contemplate revisions in light of comments received (including comments requesting relief for small businesses).

Observation: A number of taxpayers had commented on perceived drawbacks with the de minimis rule as currently drafted. The IRS has publicly acknowledged that it intended the de minimis rule to operate as a safe harbor. It is anticipated that among the changes to this rule in the final repairs regulations will be to clarify and reflect that intent.

Notice 2012-73 further advises that the IRS will shortly publish a Treasury Decision in the Federal Register, amending the temporary repairs regulations to apply to taxable years beginning on or after January 1, 2014. Taxpayers will have the option to adopt the temporary repairs regulations for taxable years beginning on or after January 1, 2012.

For taxpayers that exercise this early adoption option, the Notice provides that taxpayers may rely upon Rev. Proc. 2012-19 and Rev. Proc. 2012-20, which were issued in March 2012, providing taxpayers automatic consent procedures to implement the rules in the temporary repairs regulations. For prior discussion of Rev. Proc. 2012-19 and 2012-20, see WNTS Insight, "[Accounting method changes under the tangible property regulations: deduction and capitalization of expenditures](#)," March 13, 2012, and WNTS Insight, "[Accounting method changes under the tangible property regulations: depreciation and dispositions of property](#)," March 13, 2012.

The Notice states that for taxpayers that choose to apply the final regulations to tax years beginning on or after January 1, 2012, the IRS anticipates publishing automatic consent procedures when the final regulations are published.

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