



# New York State Bar Association

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May 7, 2004

Mr. Gregory F. Jenner  
Acting Assistant Secretary (Tax Policy)  
Department of the Treasury  
Room 3120 MT  
1500 Pennsylvania Ave., N.W.  
Washington, DC 20220

The Honorable Mark W. Everson  
Commissioner  
Internal Revenue Service  
Room 3000 IR  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

Re: Requests for Comments in Notice 2004-6 and Notice 2004-18

Dear Acting Assistant Secretary Jenner and Commissioner Everson:

I am pleased to enclose the New York State Bar Association Tax Section Report No. 1059 concerning the treatment of costs to repair, improve or rehabilitate tangible personal property and the treatment of costs to facilitate certain tax-free and taxable transactions. Our report responds to requests for comments set forth in Notice 2004-6, 2004-3 I.R.B. 308 (Jan. 20, 2004), and Notice 2004-18, 2004-11 I.R.B. 605 (Feb. 19, 2004). We commend Treasury's continuing efforts to reduce uncertainty and disputes with respect to when capitalization of such expenses is required.

Part II of the enclosed report responds to Notice 2004-6 and certain issues concerning treatment of costs to repair, improve or rehabilitate tangible personal property. In our view, the existing regulations concerning the proper treatment of repair expenses apply long-standing principles which generally are appropriate to determine when capitalization of such expenses is required. Those standards necessarily involve the weighing of a number of diverse facts and circumstances which often are specific to a particular taxpayer's business operations or industry. We do not believe that meaningful revisions of those standards, or the expansion

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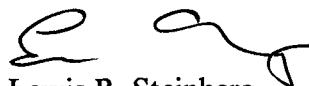
or limitation of the factors to be considered in applying them, are either necessary or appropriate to achieve the objective of clear reflection of income.

The Tax Section believes that consideration should be given to establishing an annual repair allowance that would permit expenditures falling below a specified threshold to be deducted. We note, however, that legislation may be necessary to authorize such an allowance, and the design of such an allowance may need to take into account variations in the type of property or industry involved and the expected repair experience for that property or industry.

Part III of the enclosed report responds to certain of the issues raised by Notice 2004-18 relating to the treatment of transaction costs incurred in connection with business transactions. A number of the issues raised by that Notice were addressed in prior reports; accordingly, the enclosed report addresses only those issues on which we have not previously commented. We believe that, unlike the rules relating to the capitalization of costs to acquire intangible assets that existed before the promulgation of the regulations, the rules relating to the treatment of capitalized transaction costs in corporate transactions are, in general and with some exceptions, well-defined and workable. Accordingly, we generally do not believe that any regulations to be promulgated on this subject should depart significantly from current law. The report does suggest, however, certain modifications or clarifications to existing law in the case of expenses incurred in connection with corporate distributions and the creation of partnerships and disregarded entities.

If you have any questions about the enclosed report, please do not hesitate to contact me.

Respectfully submitted,



Lewis R. Steinberg  
Chair

cc: Eric Solomon, Deputy Assistant Secretary,  
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