

**Safe Harbors  
for  
de minimis  
Expenditures**

- The definition of Materials and Supplies is expanded to include property that has an acquisition or production cost of \$200 or less.
  - ♦ This reflects an increase from the \$100 limit that was in the proposed Regulations.
- The previous two separate *de minimis* safe harbors (one for materials and supplies and the other for small dollar amount capital asset acquisitions) have been combined into a single, overall safe harbor.
  - ♦ Eliminates the ceiling which otherwise would have limited the amount of the deduction.
  - ♦ The new safe harbor is determined at the invoice or item level and is based on the policies that the taxpayer utilizes for its financial accounting books and records.
  - ♦ If the taxpayer **has an audited** financial statement ...
    - The upper limit is \$5,000 per invoice or per item.
    - Property with an economic useful life of 12 months or less is also includible under the safe harbor as long as the amount per invoice (or item) does not exceed \$5,000.
  - ♦ If the taxpayer **does not have an audited** financial statement ...
    - The reduced per invoice (or per item) threshold is required because unaudited (i.e. *reviewed* and/or *compiled*) financial statements do not provide the IRS & Treasury with sufficient assurance that the accounting procedures in place clearly reflect income.
    - The upper limit is \$500 per invoice or per item.
    - Property with an economic useful life of 12 months or less is also includible under the safe harbor as long as the amount per invoice (or item) does not exceed \$500.
    - If the cost exceeds \$500 per invoice (or item), then no portion of the cost of the property will fall within the *de minimis* safe harbor.
- **Written accounting procedures.** A taxpayer must have a written accounting policy and/or procedures in place **at the beginning of the taxable year** for treating the amounts paid for property costing less than the materiality thresholds as an expense for financial accounting purposes.
- **Other greater cut-off amounts may be used.** Either safe harbor does not preclude an IRS agent and a taxpayer from agreeing to apply a larger dollar cut-off amount based on risk analysis or materiality.
- The IRS and Treasury are not necessarily "giving away the store" with these safe harbors.
  - ♦ Both have the authority to change the safe harbor amount through published guidance.
  - ♦ An anti-abuse rule is provided to aggregate costs that are improperly split among multiple invoices.

**Safe Harbor  
for  
Routine  
Maintenance  
of Buildings**

- In general, routine maintenance involves expenditures paid for the recurring activities that a taxpayer (or a lessor) expects to perform as a result of the taxpayer's (or the lessee's) use of the unit of property to keep the unit of property in its ordinarily efficient operating condition.
  - ♦ Factors to be considered ... the recurring nature of the activity, industry practice, manufacturers' recommendations and the taxpayer's experience.
- The final Regulations permit/allow a safe harbor election to be made for routine maintenance of buildings and building components.
- The final regulations use 10 years as the period of time in which a taxpayer must reasonably expect to perform the relevant activities more than once.
- The 2011 proposed Regulations intentionally omitted this safe harbor for the routine maintenance of buildings and building components.

**Clarifications  
to  
Safe Harbor  
Rules  
for  
Routine  
Maintenance**

- Routine maintenance can be performed any time during the life of the property (provided that the activities qualify as routine under the Regulation).
- The taxpayer's treatment of the activity in its financial statements is not a relevant factor in routine maintenance determinations.
- With respect to casualty loss issues, the exception relating to amounts paid for property for which a taxpayer has taken a basis adjustment resulting from a casualty loss has been modified to make it consistent with the revisions to the casualty loss restoration rule.
- These clarifications apply to both building and non-building safe harbors for routine maintenance.

**Source**

- *De Filippis University* audio seminar series: **The Final Tangibles Regulations ... Expense or Capitalize: Parts I & II.**
- This "At a Glance" is adapted and summarized from materials included in the October 4 & 9, 2013 seminars. Visit [www.krm.com/wjd](http://www.krm.com/wjd) for more information.

***Safe Harbor  
Allowing  
"Qualifying  
Small  
Taxpayers"  
to Deduct  
de minimis  
Improvement  
Costs***

- "Qualifying small taxpayers" (QSTs) may elect to deduct building property improvement costs, subject to a threshold limitation amount.
- A "qualifying small taxpayer" is a taxpayer with gross receipts of \$10 million or less.
- Eligible building units of property
  - ♦ Can be either owned or leased by QSTs.
  - ♦ Cannot have an unadjusted basis of more than \$1,000,000.
- **Limitation (ceiling) on de minimis amount that may be deducted.**
  - ♦ Lower of \$10,000, or 2% of the unadjusted tax basis of the building.
- These thresholds may be adjusted subsequently through published guidance.
- Rules are provided for determining the unadjusted basis of both owned and leased building units of property.
  - ♦ This eliminates the need to separately analyze the building structure and the building systems, as required elsewhere in the improvement rules.
- **Caution ... cliff effect.** The safe harbor is ***not applicable to any*** amounts spent during the year ***if*** the amount paid for repairs, maintenance, improvements, and similar activities performed on a building unit of property exceeds the safe harbor threshold for the year.
  - ♦ In that case, the general rules for determining improvements, including the routine maintenance safe harbor for buildings, are applicable.
  - ♦ The taxpayer may also elect to apply the *de minimis* safe harbor under Reg. Sec. 1.263(a)-1(f) to amounts qualifying under the *de minimis* safe harbor, regardless of the application of the safe harbor for small taxpayers.
- This safe harbor may be elected annually on a building-by-building basis.
- Election is made by simply including a statement on the timely filed original Federal tax return, including extensions, for the year the costs are incurred for the building.
  - ♦ Once made, this election may not be revoked.

***Election to  
Capitalize Repair  
& Maintenance  
Costs***

- An election may be made to capitalize (instead of deduct) expenditures for repair and maintenance activities provided that the taxpayer...
  - ♦ Incurs the amounts in carrying on a trade or business, and
  - ♦ Treats the amounts as capital expenditures and depreciates them on its books and records.
- This election must be applied to all amounts paid for repair and maintenance to tangible property that are treated as capital expenditures on the taxpayer's books and records for that year.
- For costs capitalized under this election, depreciation must begin in the taxable year when the improvements are placed in service by the taxpayer.
- The election is made by attaching a statement to the taxpayer's timely filed original Federal tax return (including extensions) for the taxable year in which the improvement is placed in service.
  - ♦ Once made, this election may not be revoked.
- **Flexibility.** A taxpayer that capitalizes repair and maintenance costs under this election is still eligible to apply the *de minimis* safe harbor, the safe harbor for small taxpayers, and the routine maintenance safe harbor to repair and maintenance costs that are not treated as capital expenditures on its books and records.

***Fixed Asset  
Accounting  
&  
Dispositions***

- The provisions for fixed asset accounting and dispositions under Section 168 that were included in the 2011 proposed Regulations were not finalized as part of the Sept. 19 release of the final Regulations. Instead, these provisions have been reissued as repropoed Regulations.
- These repropoed Regulations appear to considerably lessen many of the technical difficulties and administrative burdens that businesses anticipated with compliance efforts if the 2011 proposed rules had been enacted.
- It appears that taxpayers (who made renovations in earlier years) will continue to have ***favorable options*** to apply the 2011 proposed Regulations to their 2012 and/or their 2013 taxable years.

**Clarification of Concepts, Standards & Tests for Determining Building & Other Improvements**  
*(These additional discussions are not attached)*

***Citations***

- Final Regulations: TD 9636 ... 26 CFR Parts 1 & 602 (Fed. Reg. Vol. 78, No. 182, Sept. 19, 2013)
- Repropoed Regulations under Section 168: REG-110732-13 ... 26 CFR Part 1 (Fed. Reg. Vol. 78, No. 182, Sept. 19, 2013)