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New IRS regulations actually help property owners

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The IRS released Permanent and Proposed Regulations in September that actually provide a great deal of benefit to savvy property owners. While these regulations are complex and far reaching, I will attempt to provide an "elevator pitch" on these regs. First of all, the Permanent Regulations pertaining to IRC Section 1.263 (a), (b) and (c) provide clarification on how certain items need to be capitalized vs. expensed. These regulations explain how certain facilitative costs such as pre-development expenditures and costs incurred to bring a building up to code must be capitalized. Also, the terms Betterment, Restoration and Adaptation are critically important to remember when determining whether an incoming asset can be expensed or must be capitalized. To further add to the complexity, the IRS has introduced the concept of Units of Property - which must be used to establish materiality thresholds for the purposes of expensing incoming assets. That's right real estate professionals, I said EXPENSING incoming assets! Under these new regulations, property owners can now expense major items as repairs, as long as the incoming assets fall within the prescribed parameters defined by the IRS.

Here is an example - in the past, a \$200,000 roof membrane replacement might have been previously capitalized as 39-year property due to its relatively large amount. However, compared to the Unit of Property to which it is associated with, it could be expensed under these new regulations - provided of course that it did not constitute a Betterment as defined by the IRS. The IRS gives other examples including replacement of HVAC units and windows and there appears to be some guidance that less than 30% replacement of a Unit of Property could potentially be classified as an expense.

The second regulation is proposed at this point but is slated to become permanent on January 1st, 2014. IRC Section 1.168 (i) provides for the disposition of assets and the writing down of any remaining depreciable basis from your tax depreciation schedule. By maintaining an accurate depreciation schedule, you will be able to properly track assets and potentially reduce property taxes. The IRS actually allows you to go back to previous years and re-cast your depreciation numbers to provide for asset write-downs done in the past - all without having to amend tax returns.

These regulations could not have come at a better time as we get ready for year-end tax planning. The regulations also state that if you wish to take advantage of the Deminims expense provisions, a written statement must be on file no later than January 1st, 2014. Also, with respect to the retirement of assets, Partial Disposition must be elected at the time you file your tax return. Be sure to discuss these important strategies with your tax professional as there are critical and essential steps that must be taken to ensure that you have the appropriate benchmark data such as detail fixed asset studies, Unit of Property designations and other information in place prior to taking advantage of these new regulations.

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