

Internal Revenue Service

Number: **200607003**
Release Date: 2/17/2006
Index Number: 162.26-00, 263.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

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Refer Reply To:
CC:ITA:B02
PLR-127132-05

Date:
November 10, 2005

In re:

Legend:

Taxpayer =
Building =
A =
B =
Year C =
D =
Year E =
F =
G =
Date H =
I =
Date J =
Date K =
L =
M =
N =

Dear :

This is in response to a letter dated May 17, 2005 that was submitted by the authorized representative of the Taxpayer. In that letter, a ruling was requested that the costs incurred in connection with the Taxpayer's mold remediation project are

deductible as ordinary and necessary business expenses under section 162 of the Internal Revenue Code.

The Taxpayer is the owner of the Building. The Building is approximately A square feet and is comprised of B wings. The Taxpayer purchased the Building in Year C at a cost of \$D. To the best of the Taxpayer's knowledge, there was no mold in the Building when it was purchased. Prior to Year E, the Taxpayer used the Building to operate a skilled nursing facility. In Year E, the Taxpayer stopped operating the facility and began leasing the Building to a series of tenants who in turn operated the facility. Currently, the Building is valued at approximately \$F, and it is used as a G-bed skilled nursing facility.

On or about Date H, the Taxpayer became aware that mold had been observed in a few areas of the Building. Following a professional inspection, it was determined that the mold problem was most severe in one I-square foot wing of the Building ("the wing"). The wing had become excessively moist as a result of a series of roof leaks as well as condensation from heating, ventilation, and air conditioning lines.

From Date J, through Date K, the Taxpayer conducted a mold remediation project ("the project") to remove the mold from the wing. The project consisted of (1) sealing off and containing the wing; (2) removing approximately 70% of the wall and ceiling drywall and 13 doors; (3) removing all of the faucets, sinks, and most of the electrical fixtures; (4) removing the mold; (5) testing in the affected area to ensure that the mold was completely removed; (6) installing new drywall and replacing a portion of the electrical and plumbing fixtures; and (7) painting.

In conducting the project, the Taxpayer reused all of the old doors and sinks and most of the electrical fixtures. The effect of the project was to restore the Building to the same physical condition that existed prior to the onset of mold. The new materials used were of substantially similar quality as the materials that were replaced. The existing floor plan was not altered, and no structural components were repaired or replaced. The project did not substantially prolong the useful life of the Building, add to its value, or adapt it to a new use. Instead, the project kept the Building in efficient operating condition.

The project cost the Taxpayer \$L, of which \$M was paid with insurance proceeds. In addition to the project, the Taxpayer renovated air conditioning and plumbing systems in the wing, and replaced the roof of the entire Building. These additional costs will be capitalized by the Taxpayer and are not a part of the Taxpayer's ruling request. The Taxpayer requests a ruling that the net cost of \$N for the project is deductible under section 162 of the Internal Revenue Code.

Section 162 of the Internal Revenue Code allows a deduction for ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business. Section 1.162-4 of the Income Tax Regulations provides that the cost of

incidental repairs which neither materially add to the value of the property nor appreciably prolong its life, but keep it in ordinarily efficient operating condition, generally may be deducted as an expense.

Section 263(a) of the Internal Revenue Code provides that no deduction is allowed for any amount paid for permanent improvements or betterments made to increase the value of any property or for any amount expended in restoring property or for making good the exhaustion thereof for which an allowance is or has been made. Section 1.263(a)-1(b) of the Income Tax Regulations provides that capital expenditures include amounts paid or incurred to (1) add value, or substantially prolong the useful life of property owned by the Taxpayer, or (2) adapt the property to a new or different use.

Based upon the particular facts and circumstances present herein, the costs incurred in connection with the Taxpayer's mold remediation project are deductible as ordinary and necessary business expenses under section 162 of the Internal Revenue Code. Before and after the project, the building was suitable for use as, and was in fact used as, a skilled nursing facility. The mold was not present when the Taxpayer purchased the building; the project did not structurally alter the building or adapt the building to a new or different use; and the mold remediation did not increase the value of the building or appreciably prolong its useful life. Instead, the mold remediation kept the building in ordinarily efficient operating condition.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

CLIFFORD M. HARBOURT
Senior Technical Reviewer, Branch 2
Associate Chief Counsel
(Income Tax & Accounting)

cc: