



**APPEALS
INDUSTRY SPECIALIZATION PROGRAM
COORDINATED ISSUE PAPER**

INDUSTRY: Retail

ISSUE: ACRS and Investment Credit
for Suspended Ceilings

COORDINATOR: Joseph Butorac

TELEPHONE: FTS: (612) 290-3867

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APPROVED:

/s/ John F. Eckert 9/4/92
for **REGIONAL DIRECTOR OF APPEALS** **DATE**
MIDWEST REGION

/s/ Donald E. Bergherm 9/29/92
for **NATIONAL DIRECTOR OF APPEALS** **DATE**

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-2-

SETTLEMENT POSITION

ACRS AND INVESTMENT CREDIT FOR SUSPENDED CEILINGS

STATEMENT OF ISSUE

Whether the suspended acoustical ceiling installed in the selling area of the new store facilities qualifies for the investment tax credit. Also, whether this suspended acoustical ceiling qualifies as either 3 or 5 year ACRS property.

EXAMINATION DIVISION'S POSITION

The position of the Examination Division is that suspended ceilings are structural components of a building as defined in the Regulation 1.48-1(e)(2). Exam contends that removability of the suspended ceiling is not the controlling factor in determining eligibility for investment credit and ACRS recovery property classification since many of the structural components listed in the regulations can be readily removed from the building. Also, Exam argues that to be considered an accessory to the retail trade, a suspended acoustical ceiling would have to be essential to the operation of the retail activity. Suspended acoustical ceilings are not essential for retail activities according to Exam since not all retail facilities have this type of ceiling. Finally, Exam maintains that suspended ceilings serve to finish the useable space below them and that the suspended ceiling is not a temporary covering for the ceiling but rather it is the

ceiling.

DISCUSSION

Treas. Reg. § 1.48-1(e)(1) provides, in part, that:

"Buildings and structural components thereof do not qualify as section 38 property. The term 'building' generally means any structure or edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is, for example to provide shelter or housing, or to provide working, office, parking, display, or sale space...."

-3-

Treas. Reg. § 1.48-1(e)(2) provides, in part, that:

"The term 'structural components' includes such parts of a building as walls, partitions, floors, and ceilings, as well as any permanent coverings therefor such as paneling or tiling; windows and doors; all components (whether in, on, or adjacent to the building) of a central air conditioning or heating system, including motors, compressors, pipes and ducts; plumbing and plumbing fixtures, such as sinks and bathtubs; electrical wiring and light fixtures; chimneys; stairs, escalators, and elevators, including all components thereof; sprinkler systems; fire escapes; and other components relating to the operation or maintenance of a building. However, the term 'structural components' does not include machinery the sole justification for the installation of which is the fact that such machinery is required to meet temperature or humidity requirements which are essential for the operation of other machinery or the processing of materials or foodstuffs. Machinery may meet the 'sole justification' test provided by the preceding sentence even though it incidentally provides for the comfort of employees, or serves, to an insubstantial degree, areas where such temperature or humidity requirements are not essential...."

In Whiteco Industries Incorporated, 65 T.C. 664 (1975), the Court stated that in deciding whether property is to be classified as tangible personal property for purposes of the investment credit, Courts have developed several questions to be considered. The questions listed by the Tax Court were:

- (1) Is the property capable of being moved and has it in fact been moved?
- (2) Is the property designed or constructed to remain permanently in place?
- (3) Are there circumstances which tend to show the expected or intended length of affixation?
- (4) How substantial a job is removal of the property and how time consuming is it?
- (5) How much damage will the property sustain upon its removal?

-4-

- (6) What is the manner of the fixation of the property to the land?

Private Letter Ruling 8102012 indicates that suspended ceilings do not qualify for the investment tax credit for three reasons. First, Revenue Ruling 66-156, 1966-1 C.B. 11, held that false ceilings do not qualify for investment credit. This Revenue Ruling has since been declared obsolete, however, no new ruling on false ceilings has been issued since Revenue Ruling 66-156 was declared obsolete in 1971. Second, the panels in the ceiling system are simply component parts of an overall system and the Regulation 1.48-1(e)(2) does not allow for fragmentation of costs in order to allow investment credit on specific components. Third, it is generally expected that suspended ceilings will be more permanent after installation than movable partitions.

In Metro National Corporation, T.C. Memo 1987-38, the Tax Court considered whether false ceilings qualify for the investment tax credit. The buildings in Metro National included both a medical professional building and a psychiatric treatment facility. The false ceilings and lay-in lighting at issue in Metro National were described by the Tax Court, as follows:

"2. False Ceilings and Lay-in Lighting

The false ceiling is composed of a "snap together" grid of metal T-strips suspended from the bare ceiling with wires twisted to obtain the proper elevation. Acoustical ceiling tiles, which are typically 2' x 4' standard size panels, are laid in place on the grid system. Light panels, which are standard sized prefabricated fluorescent

fixtures in light metal housings, typically of the same dimensions as the acoustical panels, are laid on the false ceiling grid.

The ceiling grid snaps together and can be assembled or disassembled in a matter of minutes. The ceiling tiles are not attached to the structure. Each light panel is attached to a junction box by an 8' to 10' BX cable. The BX cable has three wires which are screwed to the appropriate wires in the junction box with small plastic caps. Lighting and ceiling tiles may be, and are, moved to suit the needs or wishes of the tenant at any particular time."

-5-

In Metro National Corp., T.C.M. 1987-38, the Tax Court held that false ceilings and lay-in lighting do not qualify for ITC. The Court reasoned that some form of ceiling and lighting system was required to make the building useful and therefore, the ceiling and lighting fixtures are related to the operation of the building. The false ceiling system is a "ceiling" and the lay-in lights are "lighting fixtures" within the meaning of section 1.48-1(e)(2). The Court recognized that the acoustical tile can be removed very easily and that the location of the lighting units could be easily changed. However, the Court reasoned that movability is not the sole test for identifying tangible personal property. Movability is only one factor to be considered in applying the tests of the regulations. Furthermore, the movability of the ceiling and lighting fixtures does not show that they are not permanent. Rather, it merely demonstrates the efficiency of the false ceiling and related light system.

Based on the rationale of the Tax Court in Metro National Corporation it has been concluded that suspended acoustical ceilings do not qualify for the investment tax credit. Since it has been concluded that suspended acoustical ceilings are structural components of a building rather than tangible personal property they do not qualify for the ACRS deduction as 3 or 5 year property.