



## **LB&I Process Unit**

**Unit Name:** Identifying a Taxpayer Electing a Partial Disposition of a Building

**Knowledge Base:** Deductible and Capital Expenditures

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## Process Overview

**Note:** This Practice Unit updates the 10/9/18 Practice Unit with the same title. Formatting changes were made to improve content presentation. No substantive changes were made to the technical content.

This Process Unit focuses on identifying when taxpayers elect a partial disposition of a building or its structural components. The identification process occurs through a review of taxpayer documents and tax return information during an examination. After a positive identification, you, the examiner, can determine if there is a risk of noncompliance in recognizing the partial disposition.

Identifying that a taxpayer elected to take a partial disposition of a building is the first step in determining whether they are compliant with the IRC 168 disposition regulations. Taxpayers may make an annual partial disposition election to recognize the disposition of a portion of a building, including its structural components, in tax years beginning on or after January 1, 2014. The election is made by reporting the gain or loss on a timely-filed original tax return, including extensions, for the taxable year in which the portion of the building is disposed. No specific form or election statement is required to be attached to the return. The election may be made by any taxpayer having a depreciable interest in a building or its structural components. Electing a partial disposition of a building will generally result in a loss recognized on the tax return.

This Unit will also provide instances where taxpayers are required to recognize a partial disposition. Those include:

- A casualty event under IRC 165;
- A disposition of a portion of an asset for which gain is not recognized in whole or in part under IRCs 1031 or 1033;
- Transfers of a portion of an asset in a “step-in-the-shoes” transaction described in IRC 168(i)(7)(B); or
- Sales of a portion of an asset.

## Detailed Explanation of the Process

### Tax Law

Treasury Disposition Regulations 1.168(i)-8 provide rules for recognizing gain or loss on the disposition of Modified Accelerated Cost Recovery System (MACRS) property. Treas. Reg. 1.168(i)-8(d)(2) allows taxpayers to elect to recognize partial dispositions of MACRS property, including the disposition of a portion of a building or its structural components. The partial disposition election is an annual election for tax years beginning on or after January 1, 2014.

The IRC 168 regulations only apply to MACRS property. If the books and records show that the partially disposed asset was depreciated under a pre-MACRS method, a loss cannot be recognized on the partial disposition. Prior to these regulations, recognizing a loss on a disposed portion of an asset was generally prohibited, requiring taxpayers to continue depreciating the basis associated with the disposed portion. For example, a loss could not be recognized when an old roof was disposed and replaced with a new roof.

## Identification of Partial Disposition Election

Since no specific form is filed in making the election, identification of a partial disposition election for a building, including its structural components, occurs through a review of documents and tax return information during an examination.

1. Review Annual Reports and Forms 10-K.
2. Review the depreciation tax asset detail schedules.
3. Review the tax return for specific forms filed related to asset dispositions.

## Process Applicability

Taxpayers may make annual election to recognize partial disposition of a building, including structural components. Election does not require a form or statement attached to the return. Examiners identify the issue through a review of documents and return information during exam.

### Criteria 1

Does the taxpayer's Annual Report or Form 10-K disclose any:

- Dispositions of property owned or leased?<sup>1</sup>
- Capital improvements made to property owned or leased?<sup>2</sup>
- Casualty events?<sup>3</sup>
- Involuntary conversions?<sup>4</sup>
- Like-kind exchange transactions?<sup>5</sup>

### Criteria 2

Review the taxpayer's tax asset depreciation detail schedules for dispositions and capitalized improvements.

- Consider the taxpayer's line of business.
- Has the taxpayer capitalized improvements to a building or its structural components?<sup>6</sup>
- Is the taxpayer the owner, lessor, or lessee?
- Has the taxpayer implemented the IRC 263(a) Tangible Property Regulations (TPR)? For example, Form 3115. Application of Change in Accounting Method, Designated Change Number (DCN) 184.

- Did the taxpayer file a Form 3115, DCN 196, in tax years beginning on or after January 1, 2012, and before January 1, 2015, to make a late partial disposition election for partial dispositions in prior years?

### **Criteria 3**

Does the taxpayer's tax return have forms, including attachments or supporting tax return information, that indicate a partial disposition of a building or its structural components?<sup>7</sup>

- Form 4797, Sales of Business Property
- Form 8949, Sales and Other Dispositions of Capital Assets
- Form 8824, Like-Kind Exchanges

## **Process Steps**

You will have to identify whether taxpayers under examination made a partial disposition election. Identification will occur through review of documents and tax return information for the year under examination.

### **Step 1: Review Annual Report or Form 10-K for Dispositions**

#### **Considerations**

##### **In General**

Reviewing the taxpayer's Annual Report or its Form 10-K can provide you with a framework of what occurred in the taxpayer's business during the taxable year. These documents may provide information regarding challenges or opportunities that the taxpayer encountered. The disclosures can assist you in determining if the taxpayer had opportunities to make the election or was required to recognize the disposition of assets or portions of assets. For example, these disclosures might include:

- A casualty event;
- An involuntary conversion; or
- Projects such as remodels or improvements.

#### **Tangible Property Regulations and Disposition Regulations**

The TPR under Treas. Reg. 1.263(a)-3 provide rules for improvements to buildings, including their structural components. The TPR and the disposition regulations under Treas Reg. 1.168(i)-8 interact with each other. In some cases, capitalization of the replacement costs is required on the partial disposition of an asset or portion of an asset. A review of the Annual Report or Form 10-K may help determine if there was a partial disposition of a building or its structural components that required the taxpayer to capitalize the replacement of the disposed portion of the asset.

Treas. Reg. 1.263(a)-3(k) requires capitalization when a part or a combination of parts, that comprise a major component or substantial structural part of a Unit of Property (UOP), is replaced. Replacement costs must be capitalized regardless of the size or importance if:

- The taxpayer has properly deducted a loss for that component;
- The taxpayer has properly considered the adjusted basis of the component in realizing gain or loss resulting from the sale or exchange of the component; or
- A UOP is restored following a casualty loss/event under IRC 165. Refer to IRC 263(a) for capitalization requirements.

### **Partial Dispositions Required**

Review the Annual Report or Form 10-K for statements regarding casualty events or involuntary conversions such as a flood, hurricane, fire, or other disaster; or the exchange of property in a like-kind exchange.

Certain partial dispositions are required to be recognized:<sup>8</sup>

- A casualty event described in IRC 165;
- A disposition of a portion of an asset for which gain (determined without regard to IRCs 1245 or 1250) is not recognized in whole or in part under IRCs 1033 or 1031.
- Transfers of a portion of an asset in a “step-in-the-shoes” transaction described in IRC 168(i)(7)(B); or
- Sales of a portion of an asset.

### **Statements of Other Asset Dispositions**

Look for statements regarding the disposition of any property owned or leased by the taxpayer. Does the taxpayer state that it has abandoned, sold, retired, or exchanged property, such as a building or its structural components? For example, the Annual Report may state that a building or other property was destroyed.

## **Step 2: Review Tax Asset Depreciation Schedules**

Review the tax asset depreciation detail schedules for dispositions and capitalization.

### **Considerations**

#### **Tax Asset Depreciation Schedules Review**

Review the tax asset depreciation detail schedules for dispositions, partial dispositions,<sup>9</sup> and capitalized improvements.<sup>10</sup> The tax depreciation schedules can provide information as to assets capitalized in the current year and assets or portions of assets disposed in the current year. If any of the descriptions appear to be related to a building

or its structural components,<sup>11</sup> the taxpayer may have elected to recognize a partial disposition. For example, look for descriptions of portions of a building removed or added during the year such as Heating, Ventilation, and Air-Conditioning (HVAC), roof, plumbing, walls, floors, or windows.

### **Change of Accounting Method**

Has the taxpayer implemented the IRC 263(a) TPR? This is required for tax years beginning on or after January 1, 2014. Generally, a Form 3115, Application for Change of Accounting Method, would be filed by a LB&I taxpayer to comply with the TPR.

### **Taxpayer's Line of Business**

Consider the taxpayer's line of business and its depreciable interest in its fixed assets.

- Is the taxpayer an owner of a building, including its structural components?
- Is the taxpayer a lessor of a building?
- Is the taxpayer a lessee of a building or a portion of a building?

If the taxpayer has a depreciable interest in a leasehold improvement, they can recognize a partial disposition of that leasehold improvement.

### **Building Additions or Expansions**

A partial disposition may not occur if the taxpayer merely adds or expands the building, such as the addition of new rooms or walls in a formerly open area. A taxpayer must actually dispose of a structural component of a building or a portion of a component to make a partial disposition election. Does the tax asset depreciation schedule show a gain or loss on a disposed asset or portion of an asset? Generally, a taxpayer's fixed asset detail schedule will have additional schedules that will report gains/losses on specific tax return forms, such as Forms 4797, 8824, 8949.

- Is there a gain or loss calculated with sale proceeds?
- Is there a gain or loss calculated through a like-kind exchange or an involuntary conversion?
- Is there a physical abandonment that shows a loss without any sale proceeds?

## **Step 3: Review Forms 4797, 8949, and 8824**

Review tax return Forms 4797, 8949, and 8824 for partial dispositions of buildings, including its structural components.

### **Considerations**

#### **Tax Return Forms**

Does the tax return have forms filed that indicate a partial disposition of a building or its structural components? Although such descriptions are not required to be stated on the

forms, look for descriptions of portions of a building such as HVAC, roof, plumbing, walls, and windows.

### **Form 4797**

The Form 4797 reports the gain or loss on the partial disposition of a building or its structural components<sup>12</sup> used in a taxpayer's trade or business.<sup>13</sup> Gains from partial dispositions should be reported on Line 1b and losses on Line 1c. While taxpayers may not report the partial disposition under the correct parts of Form 4797, you should review the following areas for partial dispositions of a building or its structural components, including involuntary conversions:

- Part I - Reported as IRC 1231 property.
  - Held for more than a year and sold or exchanged at a loss.
- Part II - Reported as ordinary income property.
  - Not sold or exchanged; for example, abandoned, junked, or scrapped.<sup>14</sup> A loss is generally recognized; however, no gain or loss may be recognized when the asset has been fully depreciated.
  - Held for one year or less and sold or exchanged for a gain or loss.
  - Deducted under the Treas. Reg. 1.263(a)-1 de minimis safe harbor and is now either sold, exchanged, abandoned, junked, or scrapped.
- Part III - Used to compute ordinary income recapture.
  - Held for longer than a year and sold or exchanged at a gain.
  - Gain is reported from Part III to Parts I and II, depending upon whether the gain is IRC 1231 gain or ordinary gain under IRCs 1245 or 1250 recapture.
  - Investment Property Gain, if gain is greater than the recapture amount, the excess is reported on Form 8949 as capital gain.

### **Form 8949**

Form 8949 is used with Schedule D. This form can be used to report the gain or loss on the partial disposition of a building or its structural components, including involuntary conversions, held for investment purposes.

- Part I - Held for one year or less (short-term).
- Part II - Held for longer than a year (long-term).
- Forms 4797 and 8824 may be the initial form calculating gain or loss on the disposition of property held for investment purposes, with the result being transferred to Form 8949.



## Form 8824

This form reports an exchange of business or investment property for property of a like-kind.<sup>15</sup>

- A taxpayer may be exchanging a portion of a building or its structural components and replacing through a like-kind exchange transaction. A taxpayer is required to recognize the partial disposition in this situation.

## Examples of the Process

Taxpayer's 2016 tax return is under examination.

- The tax asset depreciation detail shows that the taxpayer owns an office building.
  - The schedule shows an original acquisition cost of \$3,900,000 on 7/1/2010.
  - The schedule shows a reduction in the basis, other than depreciation, in the amount of \$500,000 on 7/1/2016.
  - After depreciation and the \$500,000 reduction, the office building shows an adjusted basis remaining of \$2,800,000.
- The tax asset depreciation detail shows an acquisition of an elevator and PIS on 8/1/2016.
- Taxpayer's Form 4797, Line 1c and Part II, Line 10 shows a loss on a "Building Component" in the amount of \$500,000.

The exam team should question the taxpayer about what occurred on 7/1/2016 and 8/1/2016. It appears that the taxpayer took a partial disposition on a portion of the office building or its structural components. Taxpayer may have disposed of an elevator on 7/1/2016 and acquired its replacement.<sup>16</sup>

In this example, the exam team has identified a partial disposition of a building, including its structural components. The next step is the risk assessment of noncompliance in recognizing the loss on the partial disposition of a building or its structural components.

The exam team may look to other Practice Units on this subject, and also contact the Deductible and Capital Expenditures Practice Network for assistance.

## Glossary of Terms and Acronyms

### Term/Acronym

### Definition

#### Asset

For disposition purposes, each building (including its structural components) is the asset.

## Term/Acronym

## Definition

- If the building includes two or more condominium or cooperative units, each condominium or cooperative unit (including its structural components) is a separate asset.
- After a taxpayer places a building in service, each improvement or addition to that building is a separate asset.

### Building

For purposes of the Disposition Regulations, has the same meaning as that term is defined in Treas. Reg. 1.48-1(e)(1).

- 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 house, or to provide working, office, parking, display, or sales space. The term includes, for example, structures such as apartment houses, factory and office buildings, warehouses, barns, garages, railway or bus stations, and stores. Such term includes any such structure constructed by, or for, a lessee even if such structure must be removed, or ownership of such structure reverts to the lessor, at the termination of the lease.

### DCN

Designated Change Number

### Disposition

A disposition occurs when ownership of the asset is transferred or when the asset is permanently withdrawn from use either in the taxpayer’s trade or business or in the production of income.

- A disposition includes the sale, exchange, retirement, physical abandonment, or destruction of an asset.
- A disposition also occurs when an asset is transferred to a supplies, scrap, or similar account, or when a portion of an asset is disposed.
- A disposition also includes the disposition of a building’s structural component or such portion thereof.<sup>17</sup>

## Term/Acronym

## Definition

### Disposition Regulations

Treas. Reg. 1.168(i)-8. Published in T.D. 9689; 2014-36 I.R

### HVAC

Heating, Ventilation, and Air-Conditioning

### MACRS Property

Modified Accelerated Cost Recovery System property is defined in Treas. Reg. 1.168(b)-1(a)(2) as tangible, depreciable property that generally is PIS after December 31, 1986, and subject to IRC 168.

### PIS

Placed in Service

### Structural Components

For purposes of Disposition Regulations, has the same meaning as that term is defined in Treas. Reg. 1.48-1(e)(2).

- The term “structural components” includes such parts of a building as walls, partitions, floors, and ceilings, as well as any permanent coverings 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; electric wiring and lighting 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 the employees, or serves, to an insubstantial degree, areas where such temperature or humidity requirements are not essential. For example, an air conditioning and humidification system installed in a textile plant in

## Term/Acronym

## Definition

order to maintain the temperature or humidity within a narrow optimum range which is critical in processing particular types of yarn or cloth is not included within the term “structural components.”

TPR

Tangible Property Regulations

UOP

Unit of Property

## Related Practice Units

- Examining a Taxpayer Electing a Partial Disposition of a Building

## Training and Additional Resources

### Training PowerPoint

- MACRS Property Disposition Reg Part 1 - 2015 Centra
- MACRS Property Disposition Reg Part 2 - 2015 Centra
- Tangible Regulations Part 1 - 2014 Centra
- Tangible Regulations Part 2 - 2014 Centra

### Additional Resources

- Audit Technique Guide, Capitalization of Tangible Property
- MACRS Dispositions FAQs
- Electing a Partial or a Late Partial Disposition Job Aid
- MACRS Property Overview Job Aid
- MACRS Property Record Keeping Requirements Job Aid
- What is a MACRS Disposition? Job Aid

## References

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<sup>1</sup> IRC 168 and Treas. Reg. 1.168(i)-8

<sup>2</sup> IRC 263(a) and Treas. Reg. 1.263(a)-3

<sup>3</sup> IRC 165

<sup>4</sup> IRC 1033

<sup>5</sup> IRC 1031

<sup>6</sup> IRC 263(a), Treas. Regs. 1.263(a)-1, 2, and 3, and 1.48-1(e)(1) and (2).

<sup>7</sup> IRCs 168, 165, 1031, 1033, and 1221 and Treas. Regs. 1.168(i)-8, 1.48-1(e)(1), and 1.48-1(e)(2)

<sup>8</sup> Treas. Reg. 1.168(i)-8

<sup>9</sup> Treas. Reg. 1.168(i)-8

<sup>10</sup> IRC 263(a) and Treas. Regs. 1.263(a)-1, 2, and 3

<sup>11</sup> Treas. Reg. 1.48-1(e)(1) and 1.48-1(e)(2)

<sup>12</sup> Treas. Reg. 1.48-1(e)(1) and 1.48-1(e)(2)

<sup>13</sup> Treas. Reg. 1.168(i)-8

<sup>14</sup> IRC 1033

<sup>15</sup> IRC 1031

<sup>16</sup> Treas. Regs. 1.168(i)-8 and 1.263(a)-3

<sup>17</sup> Treas. Reg. 1.168(i)-8(b)(2)