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Via Electronic and USPS

Ms. Cheryl P. Claybough
Director, Pre-Filing and Technical Guidance
Internal Revenue Service
Large Business & International Division LM:PFTG
1111 Constitution Avenue, NW
Mint Building, M-3-442
Washington, DC 20224

American Gas Association – Interstate Natural Gas Association of America
Request For Guidance Under Rev. Proc. 2003-36

Dear Ms. Claybough:

Members of the American Gas Association ("AGA") and members of the Interstate Natural Gas Association of America ("INGAA") respectfully request published guidance under Rev. Proc. 2003-36, 2003-1 C.B. 859, pursuant to the Internal Revenue Service ("IRS") Industry Issue Resolution ("IIR") Program, on an issue that is currently disputed and common to taxpayers that own natural gas transmission and distribution assets. A taxpayer that owns such assets incurs significant costs both to maintain them in ordinary efficient operating condition and for capital improvements. Such costs are deductible as ordinary business expenses under section 162 of the Internal Revenue Code of 1986, as amended ("IRC"), or capitalized under section 263, IRC.

Recently, disputes have arisen between the IRS and taxpayers that own natural gas transmission and distribution assets regarding which costs are deductible under section 162, IRC and which costs are capitalizable under section 263, IRC. This issue is now appropriate for consideration in the IIR Program because (1) there is uncertainty about the appropriate tax treatment of each factual situation; (2) this uncertainty results in the repetitive examination and controversy throughout the natural gas industry; (3) the repetitive examination and controversy results in a significant burden to both the IRS and taxpayers; (4) the issue is faced by virtually every member of the industry; and (5) the issues are highly factual. Furthermore, virtually all taxpayers for whom this guidance would be applicable are under the jurisdiction of the Large Business & International Division of the IRS ("LB&I") and many have current examinations stalled pending guidance on this issue.

More importantly, most natural gas transmission and distribution companies have been either granted permission by the Commissioner of the IRS to change their methods of accounting for determining which expenditures are deductible repairs under section 162, or must be capitalized under section 263, or are in the process of obtaining such permission, which the Commissioner now grants automatically. Rev. Proc. 2009-39, 2009-38 IRB 371, Section 2.08. Guidance is needed for field examiners to determine whether the methods of accounting to which taxpayers have received permission to change clearly reflect income. Furthermore, this issue has been designated a Tier 1 issue. LMSB-4-0110-001, January 22, 2010. In this designation, the IRS Issue Management Team indicated that it was seeking to publish guidance in this area under the IIR process, specifically with respect to three industries, one of which is the utility industry. Without such guidance, IRS examiners and industry technical advisors will find it difficult to reach any resolution with taxpayers on this issue.

AGA is the trade organization of the local natural gas distribution companies (LDCs). AGA represents 199 LDCs that deliver natural gas to residential, commercial and industrial customers throughout the United States. More than 64 million customers receive their gas from AGA members. This represents 91 percent of all natural gas customers. INGAA is the trade organization of the natural gas pipeline industry in North America. INGAA represents almost all of the interstate natural gas transmission pipeline companies operating in the United States. Its 28 members transport over 95 percent of the nation's natural gas through a network of 200,000 miles of pipelines.

AGA and INGAA request, on behalf of their members, published guidance addressing which costs are deductible as ordinary business expenses under section 162, IRC, and which costs are capitalized under section 263, IRC.

The expenditures that the members of AGA and INGAA would like addressed are those with respect to transmission, storage and distribution assets used to deliver pipeline quality gas to customers. The United States gas transmission systems consist of more than 200,000 miles of pipelines operating at pressures of over 100 pounds per square inch ("psi"), and often over 1,000 psi. Transmission pipelines carry natural gas from the gas producers or storage facilities to areas where natural gas is consumed. High-pressure natural gas is carried by the transmission pipelines to a transfer point (commonly called the "city gate") where the pressure of the natural gas is reduced to lower pressures (generally up to approximately 60 psi) and distributed through local distribution systems, which deliver natural gas to neighborhoods, businesses, and consumers through millions of miles of pipe.

AGA and INGAA believe that the issues raised with respect to natural gas transmission and distribution assets are unique in that assets are interconnected over long distances to form functionally integrated systems. AGA and INGAA are prepared to submit relevant factual material and a specific proposal with respect to transmission pipelines and distribution assets once the IRS selects this issue for the IIR Program.

Section 3.01 of Rev. Proc. 2003-36 sets forth the factors that the IRS will consider in determining whether an issue is appropriate for the IIR Program. AGA and INGAA believe this issue satisfies each of the criterion in a manner that strongly supports acceptance of this issue into the IRS IIR Program. Conversely, none of the factors under section 3.02 of Rev. Proc. 2003-36, which lists issues not appropriate for the IIR program, is applicable to the guidance the natural gas industry is seeking.

AGA and INGAA strongly support efforts to reach resolution of issues on an industry-wide basis. The issue proposed herein for IIR is especially suitable for inclusion in the program because of its applicability to virtually all taxpayers within the natural gas industry, its currency, the amounts involved and the desire and commitment of AGA and INGAA members to work with the IRS for issuance of appropriate guidance that will allow the completion of current audits and end the repetitive cycle of examination and controversy over this issue. Representatives of AGA and INGAA members are prepared to meet with the IRS to discuss this matter further and provide information which is necessary for a successful resolution of this key industry issue.

AGA and INGAA, on behalf of their members, respectfully request your consideration of this issue for inclusion in the IIR Program, and the dedication of sufficient resources to obtain timely published guidance. By publishing guidance on this issue, the IRS would allow a number of audits to move forward, and significantly shorten the time taken for the typical examination of taxpayers in the natural gas industry. It would thereby contribute materially to the mutual objectives of the natural gas industry and the IRS to achieve currency, certainty and consistency in the examination process.

Respectfully Submitted,

Alexander Zakupowsky, Jr.

cc: Mr. Keith M. Jones
Members of the American Gas Association Taxation Committee
Members of the Interstate Natural Gas Association of America