



Ernst & Young LLP
1101 New York Avenue, NW
Washington, DC 20005-4213

Tel: +1 202 327 6000
Fax: +1 202 327 6200
ey.com

Internal Revenue Service
Office of Prefiling and Technical Services
Large and Mid-Size Business Division LM:PFT
Mint Building 3rd Floor M3-420
1111 Constitution Avenue, NW
Washington, DC 20224
Fax: 202-283-8406

21 April 2014

Duplicate Sent via e-mail: IIR@irs.gov

Re: Industry Issue Resolution ("IIR") Program Request for Treatment of Expenditures Related to Repair and Maintenance of Mining Industry Equipment and Plant Property

Dear Sir or Madam:

The National Stone, Sand, and Gravel Association ("NSSGA") respectfully requests and submits an issue for consideration under the Internal Revenue Service's IIR Program as set forth in Rev. Proc. 2003-36. Additionally, the National Mining Industry ("NMA") is expected to join and participate in the IIR. The NMA is awaiting formal approval from their taxation committee prior to formally joining the application. Hereafter, NSSGA and NMA are collectively referred to as the "Mining Industry" or "Industry."

Together, the NSSGA and NMA represent over 300 members of the Mining Industry, varying in size. These members represent the lion's share of the industry's annual revenues, which exceed \$100 billion.

Issue for IIR Consideration

Members of the Mining Industry operate vast amounts of specialized equipment and plant property in their business operations. Because of the intensity and severity of the heavy wear and tear on mining equipment, this specialized equipment requires regular, costly repairs and maintenance to remain fully operational. The interconnected mining processing equipment is also subject to significant wear and tear, and significant maintenance activities on mining and processing property are the norm.

Historically, the determination of whether amounts paid for maintenance of mining equipment qualify as deductible repairs and maintenance costs has been an area of contention; and the recently released final tangible property capitalization regulations help resolve some, but not all, of the gray areas. It is commonplace for members of the Mining Industry to deal with these issues not only on exam, but also at appeals, and on consecutive exam cycles. As a result, Industry members must spend a substantial amount of time, cost, and resources to these issues every year. Similarly, the IRS also devotes a substantial amount of resources dealing with these issues annually in both exam and appeals. And, even with the substantial amount of costly resources devoted each year, the outcomes often are administratively

burdensome and still lead to uncertain and inconsistent results, both from year to year as well as among different taxpayers. Specifically, the regulations do not resolve the gray area or provide clarity for unit of property, major component, or routine maintenance determinations. The difficulty in resolving these issues is due, in part, to the uniqueness of the specialized equipment and plant property developed for mining industry applications. The mining industry has unique, capital intensive plant and equipment that is often used under harsh conditions requiring significant routine maintenance. The equipment and plant can be categorized into several broad areas: surface mining equipment and systems (e.g., haul trucks, rock crushers, and conveyor systems), underground mining equipment and systems (e.g., continuous miners, longwall mining equipment, and underground haulage systems), downstream plant property (e.g., plants used to separate minerals from raw ores and process materials), and other industry specific property systems (e.g., surface drilling equipment, drag lines, and other earth moving systems).

We have included a few specific examples to illustrate the nature of mining industry equipment and plant property. Ball mills (see attachment) are specialized plant systems used in the metal mining industry to finely pulverize metal bearing ores prior to their introduction to a flotation system which separates metals from other materials. These systems generally are not used in any other industry. Ball mills are comprised of multiple parts/components to process the metals or minerals being extracted. Coal preparation plants are another example (see attachment). Like a ball mill used in the metal mining industry, a coal preparation plant is used to clean coal prior to its loading for shipment. Also like ball mills, this is a unique plant system in which the IRS and taxpayers have disagreed on the unit of property and on whether expenditures are or are not capital. Even certain discrete equipment for which the unit of property is clear, such as haul trucks (see attachment), the use of the equipment as well as the routine major maintenance required for such equipment may be unique within the Mining Industry.

Historically, taxpayers and the IRS have frequently argued whether repair and maintenance costs are deductible or capitalizable. As the regulations remain ambiguous as to which components/parts comprise a unit of property or major component (i.e., perform a discrete and major function or operation, or perform a discrete and critical function in the operation of the unit of property) for such unique and specialized property, the Mining Industry and IRS likely will continue to deal with these issues regularly on exam.

Possible Solution

The Industry believes that, with a more in-depth understanding of the specialized equipment, processes, and maintenance activities prevalent in the mining industry, the IRS and the Industry would be able to find a greater degree of common ground on capitalization and deduction issues for mining property. The Mining Industry believes that, working together, the IRS and the Industry could develop sensible, bright-line definitions of units of property and major components, particularly for mining plant property (as was created for generation assets in Revenue Procedure 2013-24). Agreed-upon definitions of units of property and

major components could significantly reduce controversy. Further, a better understanding of common maintenance activities on specialized mining property might enable the development of simplified rules for applying and/or documenting what constitutes routine maintenance in the mining context.

We would appreciate the opportunity to work with the IRS to develop IIR guidance that would provide clarification and simplification, saving time and resources for both the Industry and the IRS as well as enabling more equal application of the law among taxpayers in the Industry. Representing the lion's share of the Mining Industry, the NSSGA and NMA members can assist the IRS in developing a thorough understanding of the industry's unique processes and capitalization issues to achieve these results.

Contact

Ernst & Young LLP is pleased to be representing members of the NMA and NSSGA in this effort. I will be the NSSGA's and NMA's primary point of contact for this request and will help arrange meetings, provide information, and respond to IRS requests, as needed. Please contact me at (314) 290-1205 or at andy.miller@ey.com if I may provide any additional information to assist in consideration of the Industry's request.

Sincerely,



J. Andrew Miller
Partner

Additional Contacts: Brandon Carlton, Ernst & Young LLP (Washington, DC)
Susan Grais, Ernst & Young LLP (Washington, DC)
Rayth Myers, Ernst & Young LLP (Washington, DC)
Pamela Whitted, National Stone, Sand & Gravel Association (Alexandria, VA)

Attachments (x3)