



Construction Tax Planning: A Proactive Methodology to Accelerated Depreciation

BY PETER J. SCALISE

A properly designed and implemented Construction Tax Planning analysis will proactively identify additional tax savings related to new and / or planned construction projects. It should be duly noted that a Construction Tax Planning analysis should not be confused with a Cost Segregation analysis as there are several notable differences between a Cost Segregation analysis and a Construction Tax Planning analysis.

A Cost Segregation analysis will methodically review property, plant and equipment and properly reclassify real property (e.g., property that is generally depreciated for tax return purposes over a period of either 27.5 years in the case of commercial residential apartment buildings or 39 years in the case of commercial office buildings) into personal property (e.g., property that is generally depreciated for tax return purposes over a period of either 3, 5, or 7 years) and land improvements (e.g., property that is generally depreciated for tax return purposes over a period of 15 years) by reviewing all of the structural components within the building structure (e.g., exterior walls, roof, windows, doors, etc.) and the building systems (e.g., lighting, HVAC, plumbing, electrical, escalators, elevators, fire-protection and alarm systems, security systems, gas distribution systems, etc.). In general, floor plans and blueprints are meticulously reviewed and site inspections are conducted to review the building envelope as part of an engineering based Cost Segregation analysis to ensure sustainable tax return filing positions per Circular 230.

In sharp contrast, a Construction Tax Planning analysis utilizes a proactive “Pre-Design Phase” methodology to identifying, gathering, and documenting additional tax savings related to new and / or planned construction projects whether in connection to:

- ✓ *Constructing a New Building;*
- ✓ *Adding a New Wing to an Existing Building; or*
- ✓ *Renovating a Single Floor within an Existing Building.*

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Construction Tax Planning enables accelerated depreciation deductions through the recommendation of select materials and supplies to be utilized in the “Construction Phase” to ensure that the structural components will be classified as personal property as opposed to real property (e.g., requesting a design-build contractor to utilize modular internal walls to bifurcate office and / or conference room space in a commercial office building as opposed to permanently

affixing these said internal walls to bifurcate office and / or conference room space within the floor configuration layout will enable the said structural components to be classified as personal property with a 5 year depreciable class life as opposed to real property with a 39 year depreciable class life).

In addition, Form 3115 is never filed as Construction Tax Planning is proactive planning and not reactive planning. Noting, there is no need to reclassify asset classifications as all of the structural components of the building envelope are properly classified when they are initially placed into service on a timely filed tax return. This mitigates IRS audit risk as an accounting method change never occurred and consequently Form 3115 is not filed. It should be duly recalled that Accounting Method changes only occur when a transaction is treated a certain way on a tax return (i.e., regardless of correctly or incorrectly) for a period of two years or more.

Finally, and as applicable, by combining Cost Segregation analysis with both the principles of Construction Tax Planning and Abandonment Deduction Planning per the Final Treasury Regulations governing Tangible Property (e.g., the retirement or abandonment of structural components within the building envelope before they have been fully depreciated over their asset class life for tax return purposes) you can optimize the true value of a comprehensive fixed asset analysis. ☺

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