DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR CHIEF, EXAMINATION DIVISION
GEORGIA DISTRICT

FROM: Branch Chief, Branch 6
CC:DOM:P&SI:6

SUBJECT: Classification of Magnetic Stripe Keycard Door Locking System

This Written Technical Assistance-Nondocketed responds to your inquiry dated July 30, 1998. This technical assistance is advisory only, is not binding on Examination or Appeals, is not to be furnished or cited to taxpayers or their representatives, and is not to serve as the basis for closing a case. Also, the substance of this memorandum will not be recommended for publication as a revenue ruling or revenue procedure. This document is not to be cited as precedent.

ISSUE:

You have asked us to determine whether a hotel's new magnetic stripe keycard door locking system is classified as nonresidential real property or tangible personal property under section 168 of the Internal Revenue Code.

CONCLUSION:

We conclude that a hotel's new magnetic stripe keycard door locking system is classified as nonresidential real property under section 168 of the Code.

FACTS:

The facts are that a hotel has recently installed on its interior guest room doors a new magnetic stripe keycard door locking system to replace a mechanical key door locking system. The cost of the new system includes doorknobs, locksets,

keycards, an encoder, installation, and training. Classification as nonresidential real property or tangible personal property is a highly factual determination.

LAW AND ANALYSIS:

The classification of property determines the depreciation deduction under sections 167(a) and 168(a) of the Code.

Section 168(e)(2)(B) of the Code provides that the term “nonresidential real property” means section 1250 property which is not (i) residential rental property, or (ii) property with a class life of less than 27.5 years.

Section 1250(c) of the Code provides that the term “section 1250 property” means any real property (other than section 1245 property, as defined in section 1245(a)(3)) which is or has been property of a character subject to the allowance for depreciation provided in section 167.

Section 1245(a)(3) of the Code provides that the term “section 1245 property” includes any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 and is personal property.

Section 1.1250-1(e)(3) of the Income Tax Regulations provides that the term “real property” means any property which is not personal property within the meaning of section 1.1245-3(b).

Section 1.1245-3(b) of the regulations provides that the term “personal property” means (1) tangible personal property (as defined in section 1.48-1(c), relating to the definition of “section 38 property” for purposes of the investment credit), and (2) intangible personal property.

Section 1.48-1(c) of the regulations provides that the term “tangible personal property” means any tangible property except land and improvements thereto, such as buildings or other inherently permanent structures (including items which are structural components of such buildings or structures). Tangible personal property includes all property (other than structural components) which is contained in or attached to a building.

The first sentence of section 1.48-1(e)(2) of the regulations provides 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 ducks; 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.

The United States Court of Federal Claims in Boddie-Noell Enterprises, Inc. v. U.S., 36 Cl. Ct. 722, 739 (1996), stated that

> [b]ased on a reading of the clear language of the above statutory and regulatory scheme, to the extent any of the claimed items are expressly listed as a building or structural component in the regulations, they should be excluded from the definition of section 38 property and are not creditable.

The Claims Court, referring to Scott Paper Co. v. Commissioner, 74 T.C. 137 (1980) (discussed below), added that "[t]his court does not feel that a relaxed interpretation of the promulgated regulations is appropriate ... ." Boddie-Noell Enterprises, Inc., 36 Cl. Ct. at 740.

Because doors are expressly listed as a structural component in section 1.48-1(e)(2) of the regulations, they are excluded from the definition of tangible personal property and, thus, are nonresidential real property. Because a door is useless without a doorknob and locking system, they are an integral part of the door itself and, consequently, also are structural components and, thus, nonresidential real property.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

[redacted]

The Tax Court in Scott Paper Co., 74 T.C. at 183, referring to the first sentence of section 1.48-1(e)(2) of the regulations, stated that

> the effect of the final element ... , which reads "and other components relating to the operation or maintenance of a building," must be taken into account. That final element functions as a descriptive phrase intended to present the basic test used for identifying structural components. The preceding elements are examples of items which meet that test as a general rule. Items which occur in an unusual circumstance and do not relate to the operation or maintenance of a

> building should not be structural components despite being listed in section 1.48-1(e)(2), Income Tax Regs.

Although the Tax Court in Scott Paper Co. was interpreting the meaning of the term "structural components" for purposes of the investment credit, the Tax Court in Hospital Corp. of America v. Commissioner, 109 T.C. 21, 58 (1997), stated that the same interpretation applies for purposes of depreciation.

In Hospital Corp. of America, the Tax Court concluded that property used as an accessory to the taxpayer's healthcare business rather than necessary for the operation or maintenance of a building is tangible personal property under section 168 of the Code. For example, regarding the hospital's synchronously wired clock systems, the Tax Court stated that

> [a]lthough it seems that synchronized timekeeping systems are not unique to the healthcare business, we conclude that the synchronized clocks relate to the operations carried on within petitioners' buildings and not to the operation or maintenance of petitioners' buildings. Consequently, we hold that the branch electrical system relating to the synchronized clocks also constitute personal property ....

Hospital Corp. of America, 109 T.C. at 70.

The Tax Court in Whiteco Industries, Inc. v. Commissioner, 65 T.C. 664, 672-73 (1975), listed several factors to be considered when determining whether property is to be classified as tangible personal property for purposes of the investment credit:

> (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?
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> (3) Are there circumstances which tend to show the expected or intended length of affixation, i.e. are there circumstances which show that the property may or will have to be moved?
>
> (4) How substantial a job is removal of the property and how time-consuming is it? Is it readily removable?
>
> (5) How much damage will the property sustain upon its removal?
>
> (6) What is the manner of affixation of the property to the land?

The Tax Court in Hospital Corp. of America, 109 T.C. at 57, stated that the same factors must be considered when determining whether property is not inherently permanent and, thus, is tangible personal property for purposes of depreciation.

The Tax Court applied both Scott Paper Co. and Whiteco Industries, Inc. to interior doors in Morrision Inc. v. Commissioner, 51 T.C.M. 748 (1986), aff'd 891 F.2d 857 (11th Cir. 1990). The Tax Court stated that "doors constitute a structural component only if they are a permanent part of the cafeteria building, so that their removal would affect the essential structure of the building." Morrison Inc., 51 T.C.M. at 761.

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