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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Dan Coats
United States Senate
Washington, DC 20510

Attention:

Dear Senator Coats:

I am responding to your inquiry dated November 27, 2012, on behalf of your constituent, of . wrote about temporary regulations that address the tax treatment of amounts paid to acquire, produce, or improve tangible property under sections 162 and 263(a) of the Internal Revenue Code.

Specifically, asked about the effect of certain provisions of the temporary regulations on small businesses. She believes that the temporary regulations would require a small business taxpayer to capitalize and depreciate a $1.99 wastebasket because these regulations do not provide a deduction for de minimis expenses.

Section 1.162-3T of the temporary regulations provides rules for materials and supplies. Under these rules, the $1.99 wastebasket is a material and supply expense because it has an acquisition cost of $100 or less. If the taxpayer does not take a physical inventory of these wastebaskets at the beginning and end of the taxable year, he or she may deduct the $1.99 wastebasket as an incidental material and supply in the year of purchase. If the taxpayer does take a physical inventory of these wastebaskets, he or she may deduct the $1.99 wastebasket as a non-incidental material and supply in the year he or she begins to use the wastebasket.

The IRS and the Treasury Department received numerous comments on the temporary regulations. Many comments concerned the administrative burden that the temporary regulations impose on small businesses. As a result, in Notice 2013-73, 2012-51

Internal Revenue Bulletin 713, the IRS and the Treasury Department announced that final regulations under sections 162 and 263(a) are expected to contain changes to the temporary regulations. The notice also stated that all comments received would be considered, including comments requesting relief for small businesses.

In addition, on December 17, 2012, the IRS and the Treasury Department amended the temporary regulations by delaying their applicable date to taxable years beginning on or after January 1, 2014. Thus, taxpayers can apply the regulations that were in effect prior to the temporary regulations until final regulations become applicable. They can also choose to apply the temporary regulations for their taxable years beginning on or after January 1, 2012, and before the applicable date of final regulations.

I hope this information is helpful. If you need further assistance, please call me or at ( ) .

Sincerely,

Christopher F. Kane

Christopher F. Kane
Branch Chief, Branch 3
Office of Associate Chief Counsel
(Income Tax & Accounting)