



Policy Statement 89-8 (August 7, 1989)

***Asbestos Removal as a Major
Capital Improvement / Eligible Costs***

This policy statement is being issued to clarify the rules of the Major Capital Improvement (MCI) program as they relate to the costs of asbestos removal.

According to section 2522.4 (2) (i) (a) (b) (c) of the Rent Stabilization Code, “an owner may file an application to increase the legal regulated rents of the building or building complex on forms prescribed by the DHCR, which the DHCR shall serve upon all affected tenants, on one or more of the following grounds:

There has been a major capital improvement including an installation, which must meet all of the following criteria:

- a) deemed depreciable under the Internal Revenue Code, other than for ordinary repairs; and
- b) is for the operation, preservation, and maintenance of the structure; and
- c) is an improvement to the building or to the building complex which inures directly or indirectly to the benefit of all tenants, and which includes the same work performed in all similar components of the building or building complex, unless the owner can satisfactorily demonstrate to the DHCR that certain of such similar components did not require improvement;”

According to a spokesman for the Internal Revenue Service, asbestos removal is not regarded as depreciable under the IRS code and is treated as an expense item. This rule is in the process of being reviewed for possible amendment to make asbestos removal depreciable. Under the rules of the New York City Department of Environmental Protection, (DEP), asbestos must be removed, a) when making an installation or rehabilitating a building which may disturb the otherwise concealed asbestos or b) any time it is exposed and poses a health danger.

Section 2522.4 of the RSC clearly defines the criteria which asbestos removal has to meet in order to be considered as a MCI. According to the IRS, asbestos removal is not considered depreciable at the present time. DEP has also stated that the only time asbestos has to be removed (with the exception of when it already poses a health hazard) is when the asbestos is disturbed by demolition or installation of new equipment in a building.

Therefore the costs of asbestos removal will be allowed as part of a MCI only when it is connected with, and directly related to, other improvements or replacements which are MCI eligible.

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