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Asbestos Abatement and Other *INDOPCO* Problems

by Robert W. Wood • San Francisco

You do not have to be in real estate to be worried by TAM 9240005, the now-infamous TAM that applied *INDOPCO, Inc.*, 112 S.Ct. 1039 (1992), to require the capitalization of

asbestos removal expenses. The TAM was the subject of a good deal of fuss at the ABA Tax Section's midyear meeting. Glenn Carrington, the Service's Assistant Chief Counsel, Income Tax and Accounting, defended the TAM's conclusion. However, the Service indicated that the TAM would likely be rewritten to correct certain facts and remove some case references—maybe even those to *INDOPCO*.

To be sure, the substantive issues are more important than the theory on which the Service chose to rely. The Service concluded that removing the asbestos increased the value of the plant, increased operating efficiencies by avoiding future shutdowns, and avoided future lawsuits. But apart from its substantive ruling, the TAM was widely seen as a bellwether of what is to come on the potential reach of the *INDOPCO* decision. (For prior coverage of this issue, see "More on Asbestos Removal Costs," 1 *M&A Tax Rep't* 5 (December 1992), p. 8, and "The Continuing Flap Over Expenses—Takeover and Otherwise," 1 *M&A Tax Rep't* 3 (October 1992), p. 7.) ■