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## News & Publications

### The Tax Treatment of Incentive Payments to Customers

**By Mark Silow - September 14, 2010**

Many businesses, such as manufacturers and distributors, offer up-front incentive payments to customers in exchange for a commitment to purchase their products. A recent private letter ruling (PLR) issued by the IRS concluded certain types of incentive payments are required to be capitalized while other types may be currently deducted when paid. The PLR clearly explains when incentive payments must be capitalized rather than deducted.

The IRS reviewed incentive payments made with respect to three different categories of supply agreements utilized by manufacturers. In his article, Mark Silow notes the critical distinction among the categories was the minimum purchase obligation imposed under Category Three supply agreements that, in effect, guaranteed the manufacturer a minimum level of sales. This right has an intrinsic value that constitutes an intangible property interest. The exclusivity rights granted to the manufacturer under Category One and Category Two supply agreements were not deemed sufficient to create an intangible property right that would require capitalization for any incentive payments made pursuant to those agreements.