

Supporting Statement

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The proposed revenue procedure provides guidance for determining when statistical sampling may be used for purposes of §199 of the Internal Revenue Code and establishes acceptable statistical sampling methodologies.

Under §1.199-1(d)(1) of the Income Tax Regulations, a taxpayer must determine the portion of its gross receipts for the taxable year that is domestic production gross receipts (DPGR) and the portion of its gross receipts that is non-DPGR.

Section 1.199-1(d)(2) provides that the factors taken into consideration in determining whether the taxpayer's method of allocating gross receipts between DPGR and non-DPGR is reasonable include whether the taxpayer uses the most accurate information available; the relationship between the gross receipts and the method used; the accuracy of the method chosen as compared with other possible methods; whether the method is used by the taxpayer for internal management or other business purposes; whether the method is used for other Federal or state income tax purposes; the time, burden, and cost of using alternative methods; and whether the taxpayer applies the method consistently from year to year.

Section 1.199-3(d)(1) provides that, for purposes of §§1.199-1 through 1.199-9, a taxpayer determines, using any reasonable method that is satisfactory to the Secretary based on all of the facts and circumstances, whether gross receipts qualify as DPGR on an item-by-item basis (and not, for example, on a division-by-division, product line-by-product line, or transaction-by-transaction basis).

Section 1.199-4(b)(2)(i) provides that a taxpayer must use a reasonable method that is satisfactory to the Secretary based on all of the facts and circumstances to allocate cost of goods sold (CGS) between DPGR and non-DPGR. Whether an allocation method is reasonable is based on all of the facts and circumstances including whether the taxpayer uses the most accurate information available; the relationship between CGS and the method used; the accuracy of the method chosen as compared with other possible methods; whether the method is used by the taxpayer for internal management or other business purposes; whether the method is used for other Federal or state income tax purposes; the availability of costing information; the time, burden, and cost of using alternative methods; and whether the taxpayer applies the method consistently from year to year.

For purposes of §199, the use of statistical sampling will be considered a reasonable method that is satisfactory to the Secretary to the extent the sampling methodology meets the requirements of the proposed revenue

procedure. The collection of information is required to ensure compliance with the statistical sampling methodology contained in the proposed revenue procedure. The information will be used to evaluate compliance with the procedures described in proposed revenue procedure.

2. USE OF DATA

The information is required so that a taxpayer may claim a deduction under §199 and the IRS can determine the accuracy of the deduction amount.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

We will publish a notice in the Federal Register in the near future to solicit public comments on the proposed revenue procedure.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collection of information is in Appendix B of the proposed revenue procedure. We estimate that there are 300 respondents who will use the statistical sampling methodology contained in the proposed revenue procedure to determine their DPGR. We estimate that it will take an average of 8 hours (between 6 to 10 hours) for each respondent (taxpayer) to comply with the recordkeeping requirements in Appendix B of the proposed revenue procedure for a total burden estimated to be 2,400 hours.

Estimates of the annualized cost to respondents for the hour burdens associated with the information collection are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

Not applicable.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the revenue

procedure sunsets as of the expiration date. Taxpayers are not likely to be aware that the IRS intends to request renewal of OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Note: This is an emergency submission.

We are requesting emergency review of this submission and seek OMB approval by April 2, 2007. Section 199 was added to the Internal Revenue Code by section 102 of the American Jobs Creation Act of 2004 (Public Law 108-357), and amended by section 403(a) of the Gulf Opportunity Zone Act of 2005 (Public Law 109-135), section 514 of the Tax Increase Prevention and Reconciliation Act of 2005 (Public Law 109-222), and section 401 of the Tax Relief and Health Care Act of 2006 (Public Law 109-432). Section 199 is a complex tax provision requiring taxpayers, particular large corporate taxpayers with multiple businesses and subsidiaries, to make very complicated calculations.

The IRS published proposed regulations in the Federal Register on November 4, 2005 (70 FR 67220). The proposed regulations state that certain large taxpayers may use statistical sampling for §199 purposes. The proposed regulations and final regulations published in the Federal Register on June 1, 2006 (71 FR 31268) do not provide specific rules on the use of statistical sampling for §199 purposes. The proposed revenue procedure provides statistical sampling rules and many large corporate taxpayers have told the IRS that they will use statistical sampling for their 2006 tax returns. Without statistical sampling, taxpayers may forgo the benefit of §199 due to the tremendous cost of complying with the provision. Publication of the proposed revenue procedure later in 2007 will limit the availability of statistical sampling for 2006 returns. Furthermore, taxpayers have expressed a pressing need for guidance in this area in order to comply with their financial reporting obligations under FIN 48 which is generally required to be implemented by publicly traded companies in the first quarter of 2007. Therefore, we respectfully request that

the consideration of this submission and provision of an OMB number be completed by April 2, 2007. Any other result will be detrimental to the taxpaying public and will interfere with the mission of the IRS.