

SUPPORTING STATEMENT
(Revenue Procedures 97-36, 97-38, 97-39, 2002-9, 2008-52, and
2009-XX)

1. **CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Section 446(b) the Internal Revenue Code and §1.446-1(b) of the Income Tax Regulations states that, if a taxpayer's method of accounting does not clearly reflect income, the computation of taxable income shall be made under such method as, in the opinion of the Commissioner, does clearly reflect income. Section 446(e) and §1.446-1(e) require a taxpayer to obtain the consent of the Commissioner before the taxpayer changes its method of accounting.

In order to determine whether a taxpayer has properly adopted or changed to a permitted method of accounting, certain information about the taxpayer's use of the method is required. The revenue procedures request the information necessary to make that determination when the information is not otherwise available.

Four sufficiently related revenue procedures are included in this Paperwork Reduction Act submission. Although other items in this supporting statement and OMB Form 83-I aggregate the data for the four revenue procedures, they are described separately in item 12.

2. **USE OF DATA**

The information will be used to determine whether the taxpayer properly adopted or changed to a permitted method of accounting.

3. **USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

We have no plans to offer electronic filing. IRS publication, regulations, notices and letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. **EFFORTS TO IDENTIFY DUPLICATION**

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

5. **METHODS TO MINIMIZE BURDEN ON SMALL BUSINESS OR OTHER SMALL ENTITIES**

The user fee normally required to request consent to change a method of accounting currently is waived for these revenue procedures. We have also waived the filing of a Form 3115 where appropriate, and will accept a statement in its place. The §481(a) adjustment required for changes in method of accounting may be taken into account in the year of change, at the election of the taxpayer, if the adjustment is less than \$25,000.

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 originally received OMB approval for Rev. Proc. 97-36, Rev. Proc. 97-37, Rev. Proc. 97-38, and Rev. Proc. 97-39 on July 30, 1997, under control number 1545-1551. Rev. Proc. 97-37 was revised and reissued as Rev. Proc. 98-60, also under control number 1545-1551, on December 21, 1998. In turn, Rev. Proc. 98-60 was revised and reissued as Rev. Proc. 99-49, also under control number 1545-1551, on December 27, 1999, and Rev. Proc. 99-49 was revised and reissued as Rev. Proc. 2002-9. On August 5, 2008, Rev. Proc. 2002-9 was revised and reissued as Rev. Proc. 2008-52, also under control number 1545-1551. Now, Rev. Proc. 2008-52 is being clarified and modified by Rev. Proc. 2009-XX.

In response to the Federal Register Notice dated August 20, 2009 (74 FR 42161), we received no comments during the

comment period regarding Rev. Proc. 97-36, 97-38, 97-39, 2002-9, 2008-52, and 2009-XX.

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

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Submissions under these four revenue procedures are considered tax returns and tax return information, which are confidential as required by 26 U.S.C. §6103. In general, certain matters relating to taxability and deductibility are disclosable under 26 U.S.C. §6110.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

First, section 2.02 of Rev. Proc. 2009-XX (concerning the definition of "under examination" for purposes of Rev. Proc. 2008-52) requires a taxpayer that has a refund or credit in excess of the statutory sum under review by the Joint Committee on Taxation pursuant to § 6405, and is making an accounting method change under Rev. Proc. 2009-52, to submit an additional copy of its Form 3115 to the Joint Committee on Taxation at the same time the copy of Form 3115 is filed with the national office. We estimate that approximately 5 taxpayers per year will make this change, and that the time required to make and submit the required additional copy of Form 3115 is approximately .5 hours. The estimated burden is 2.5 hours.

Second, section 2.05 of Rev. Proc. 2009-XX requires a taxpayer (or designated shareholder, as defined in 6.02(3)(b) of Rev. Proc. 2008-52) who receives the consent of the director to make a change in method of accounting under Rev. Proc. 2008-52 to attach to its tax return the original Form 3115 that contains a statement certifying that the taxpayer (or designated shareholder) will maintain a copy of the consent of the director that will be available for inspection. We estimate that approximately 50 designated

shareholders per year will be affected by this recordkeeping burden of maintaining a copy of the director consent statement for inspection. The time required to prepare and maintain this copy of the director consent statement is approximately .5 hours. The estimated burden is 25 hours.

Third, section 2.08 of Rev. Proc. 2009-XX (concerning repair and maintenance costs) requires a taxpayer making an accounting method change under new section 3.06 of Rev. Proc. 2008-52 to prepare and attach to its Form 3115 a statement that describes the types of tangible property and the types of repair and maintenance costs included in the change. Also, new section 3.06 requires several representations relating to the repair and maintenance costs. Finally, the taxpayer must provide an additional copy of the Form 3115 to the IRS (LMSB) on the same date it files the copy of the Form 3115 with the national office. We estimate that approximately 300 taxpayers per year will make this change, and that the time required to prepare the required statement and representations and to submit the additional copy of Form 3115 is approximately 2 hours. The estimated burden is 600 hours.

Fourth, section 2.09 of Rev. Proc. 2009-XX (concerning tenant construction allowances) adds a new section 6.23 to Rev. Proc. 2008-52, which will allow a taxpayer to change its method of accounting for tenant construction allowances (allowances) entered into on or after the beginning of the year of change. New section 6.23 of Rev. Proc. 2008-52 tells taxpayers that if they want to request the same change in method of accounting for allowances under existing leases, the taxpayer must file a Form 3115 under Rev. Proc. 97-27. New section 6.23 also tells taxpayer to attach to any Form 3115 filed under Rev. Proc. 97-27 a statement and representation that is signed under penalties of perjury. The statement and representation differ depending on whether taxpayer is filing a Form 3115 as a lessee or as a lessor of an allowance. For a lessee, the statement must provide the amount of the allowance received, the amount of the allowance expended by the lessee on the property, and the name of the lessor that provided the allowance; and a representation from the lessor providing the amount of the allowance provided to the lessee and how the lessor is treating the allowance for federal income tax purposes. If the lessor capitalized the allowance (or any portion) provided to the lessee and

depreciated the property subject to the allowance, the representation must also include: the amount capitalized by the lessor, the Code section under which the lessor depreciated the property, and the life over which the lessor depreciated the property.

For a lessor, the statement must provide the amount of the allowance provided to the lessee and the name of the lessee; and a representation from the lessee that provides the amount of the allowance received from the lessor, the amount of such allowance recognized as gross income by the lessee, the amount of the allowance expended by the lessee on property, an explanation of how the lessee is treating the property subject to the allowance for federal income tax purposes. If the lessee capitalized the allowance (or any portion) received from the lessor and depreciated the property subject to the allowance, the representation must also include: the amount capitalized by the lessee, the Code section under which the lessee depreciated the property, and the life over which lessee depreciated the property. We estimate that approximately 50 taxpayers per year will make this change, and that the time required to prepare the required statement and representation is approximately 4 hours. The estimated burden is 200 hours.

Fifth, section 2.10 of Rev. Proc. 2009-XX (concerning dispositions of a structural component of a building) requires a taxpayer making an accounting method change under new section 6.24 of Rev. Proc. 2008-52 to prepare and attach a statement with the following information: a description of the types of property to which the change applies; a description of the taxpayer's unit of property under the current and proposed methods of accounting for determining when the building (including its structural components) is disposed of by the taxpayer for depreciation purposes; a description of how the taxpayer determined the unit of property under the present method for determining when the building (including its structural components) is disposed of by taxpayer for depreciation purposes; how the taxpayer will determine the unit of property under its proposed method for determining when the building (including its structural components) is disposed of for depreciation purposes; and whether the proposed unit of property for determining the disposition of buildings (including its structural components) is the same as the taxpayer's present unit of

property for determining when the building was placed in service (and if not, provide the unit of property for determining when the building, including its structural components, is placed in service by the taxpayer and explain why the taxpayer is using a different unit of property for determining when the building, including its structural components, is placed in service). If the proposed unit of property is not each building (including its structural components), taxpayers, in general, must also provide the legal authority supporting the proposed unit of property for determining when the building (including structural components) is disposed of by the taxpayer for depreciation purposes. Finally, the taxpayer must provide an additional copy of the Form 3115 to the IRS (LMSB) on the same date if files the copy of the Form 3115 with the national office. We estimate that approximately 150 taxpayers per year will make this change, and that the time required to prepare the required statement and to submit the additional copy of Form 3115 is approximately 1 hour. The estimated burden is 150 hours.

Sixth, section 2.11 of Rev. Proc. 2009-XX (concerning dispositions of tangible depreciable assets, other than buildings or its structural components) requires a taxpayer making an accounting method change under new section 6.25 of Rev. Proc. 2008-52 to prepare and attach a statement that describes the types of property to which the change applies; describes the unit of property under the taxpayer's present and proposed methods of accounting for determining when the property is disposed of by the taxpayer for depreciation purposes, and describes how the taxpayer determined the unit of property under its present method for determining when the property is disposed of by the taxpayer for depreciation purposes and how the taxpayer will determine the unit of property under its proposed method for determining when the property is disposed of by the taxpayer for depreciation purposes for the proposed method. Also, if the unit of property is not determined using the functional interdependence standard, then taxpayer must provide legal authority supporting their proposed unit of property. A taxpayer must also submit a statement of whether the proposed unit of property for determining when the property is disposed of by the taxpayer for depreciation purposes is the same as the taxpayer's present unit of property for determining when the property is placed in service (when

depreciation begins), and if not, provide the unit of property for determining when the property is placed in service and explain why the taxpayer is using a different unit of property for determining when the property is placed in service. Finally, the taxpayer must provide an additional copy of the Form 3115 to the IRS (LMSB) on the same date it files the copy of the Form 3115 with the national office. We estimate that approximately 250 taxpayers per year will make this change, and that the time required to prepare the required statement and to submit the additional copy of Form 3115 is approximately 1 hour. The estimated burden is 250 hours.

Seventh, section 2.22 of Rev. Proc. 2009-XX (concerning the ratable accrual of real property taxes) permits a taxpayer making an accounting method change under new section 19.08 of Rev. Proc. 2008-52 to prepare and attach a statement (in accordance with § 1.461-1(c)(6),) in lieu of a Form 3115, to its tax return that sets forth the information described in § 1.461-1(c)(3)(ii). If the taxpayer chooses to file the statement in lieu of a Form 3115, in addition to the information required by § 1.461-1(c)(3)(ii), the taxpayer is required to include the designated automatic accounting method change number, which is found in new section 19.08, in the statement. We estimate that approximately 10 taxpayers per year will make this change, and that the time required to insert the designated automatic change number into the required statement is approximately .5 hours. The estimated burden is 5 hours.

Except for the instances described above, the burden descriptions and calculations for Rev. Proc. 2008-52 remain the same. Accordingly, with respect to Rev. Proc. 2008-52, as amplified, clarified and modified by Rev. Proc. 2009-XX, we estimate that the total number of respondents will be 14,065 and the total annual recordkeeping and reporting burden is 15,191.85 hours.

<u>Number of Responses</u>	<u>Hours Per Respondent</u>	<u>Total Hours</u>
14,065	1.08 hours	15,191.85

In general, Rev. Proc. 97-27 continues to have the same requirements. The areas in which the requirements are being changed by Rev. Proc. 2009-XX are described below.

First, section 2.09 of Rev. Proc. 2009-XX (concerning tenant construction allowances) requires a taxpayer that wants to change its method of accounting for existing leases to file a Form 3115 under Rev. Proc. 97-27 and to attach to its Form 3115 a statement and a representation that is signed under penalties of perjury. The statement and representation differ depending on whether the taxpayer is filing a Form 3115 as a lessee or as a lessor of a tenant construction allowance (allowance). For a lessee, the statement must provide the amount of the allowance received, the amount of the allowance expended by the lessee on the property, and the name of the lessor that provided the allowance; and a representation from the lessor providing the amount of the allowance provided to the lessee and how the lessor is treating the allowance for federal income tax purposes. If the lessor capitalized the allowance (or any portion) provided to the lessee and depreciated the property subject to the allowance, the representation must also include: the amount capitalized by the lessor, the Code section under which the lessor depreciated the property, and the life over which the lessor depreciated the property.

For a lessor, the statement must provide the amount of the allowance provided to a lessee and the name of the lessee, and a representation from the lessee that provides the amount of the allowance received from the lessor, the amount of such allowance recognized as gross income by the lessee, the amount of the allowance expended by the lessee on property, and an explanation of how the lessee is treating the property subject to the allowance for federal income tax purposes. If the lessee capitalized the allowance (or any portion) received from the lessor and depreciated the property subject to the allowance, the representation must also include: the amount capitalized by the lessee, the Code section under which the lessee depreciated the property, and the life over which the lessee depreciated the property.

We estimate that approximately 50 taxpayers per year will make this change, and that the time required to prepare the required statement is approximately 2 hours. The estimated burden is 100 hours.

Second, section 3.03 of Rev. Proc. 2009-XX (for purposes of Rev. Proc. 97-27, taxpayers before the Joint Committee on Taxation are under examination) requires a taxpayer that has a refund or credit in excess of the statutory sum under review by

the Joint Committee on Taxation pursuant to § 6405, and is making an accounting method change under Rev. Proc. 97-27, to submit an additional copy of its Form 3115 to the Joint Committee on Taxation at the same time the original Form 3115 is filed with the national office. We estimate that approximately 5 taxpayers per year will be affected by this change, and the time required to make and submit the required copy of Form 3115 is approximately .5 hours. The estimated burden is 2.5 hours.

Third, section 3.04 of Rev. Proc. 2009-XX (certain foreign corporations under Rev. Proc. 97-27) requires the designated shareholder (as defined in section 6.02(3)(b) of Rev. Proc. 2009-XX) of certain foreign corporations to file a copy of the Form 3115 for the foreign corporation with the examining agent(s), Appeals officer, or counsel(s) for the government when the controlling domestic shareholders of the foreign corporation are under examination, before an appeals office or before a federal court. We estimate that approximately 20 taxpayers (designated shareholders) per year will be affected by this change, and the time required to submit the required copy of Form 3115 is approximately .5 hours. The estimated burden is 10 hours.

Except for the instances described above, the burden descriptions and calculations for Rev. Proc. 97-27 remain the same. Accordingly, with respect to Rev. Proc. 97-27, as modified and clarified by Rev. Proc. 2009-XX, we estimate that the total number of respondents will be 3,075 and the total annual recordkeeping or reporting burden is 9,745.5 hours.

Rev. Proc. 97-27 burden calculations:

<u>Number of Responses</u>	<u>Time Per Response</u>	<u>Total Hours</u>
3,075 respondents	3.17 hours	9,745.5 hours

Total Burden (Revenue Procedure 97-27+Revenue Procedure 2008-52):

<u>Number of Responses</u>	<u>Time Per Response</u>	<u>Total Hours</u>
17,140	1.45	24,937.35

13. ESTIMATED TOTAL ANNUALIZED COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register** notice dated August 20, 2009 (74 FR 42161), requested public comments on

estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

Revenue Procedure 2009-XX was added to this collection. This revenue procedure edited both Revenue Procedure 2008-52 and 1997-27 that are already under this approval number. Due to the changes made by Revenue Procedure 2009-XX, 3,890 new responses will be filed and the time per response is 1.45, creating a new total burden of 24,937 hours.

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 procedures sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB number and obtain a new expiration date before the old one expires.

17. 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.

OMB EXPIRATION DATE

We believe the public interest will be better served by not printing an expiration date on the form(s) in this package.

Printing the expiration date on the form will result in increased costs because of the need to replace inventories that become obsolete by passage of the expiration date each time OMB approval is renewed. Without printing the expiration date, supplies of the form could continue to be used.

The time period during which the current edition of the form(s) in this package will continue to be usable cannot be predicted. It could easily span several cycles of review and OMB clearance renewal. In addition, usage fluctuates unpredictably. This makes it necessary to maintain a substantial inventory of forms in the supply line at all times. This includes supplies owned by both the Government and the public. Reprinting of the form cannot be reliably scheduled to coincide with an OMB approval expiration date. This form may be privately printed by users at their own expense. Some businesses print complex and expensive marginally punched continuous versions, their expense, for use in their computers. The form may be printed by commercial printers and stocked for sale. In such cases, printing the expiration date on the form could result in extra costs to the users.

Not printing the expiration date on the form(s) will also avoid confusion among taxpayers who may have identical forms with different expiration dates in their possession.

For the above reasons we request authorization to omit printing the expiration date on the form(s) in this package.