



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

MEMORANDUM FOR GEORGE FREELAND,
W:CAR:MP:FP:S

FROM: Grant Anderson

SUBJECT: Clarification and Modification of Rev. Proc. 97-27

We request that the attached revenue procedure, Rev. Proc. 2009-XX, be submitted for approval to the Office of Management and Budget (OMB) under the streamlined procedure.

We originally received OMB approval for Rev. Proc. 97-27 under control number 1545-1541. Now, Rev. Proc. 97-27 is being clarified and modified by Rev. Proc. 2009-XX.

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.

Thank you for your attention to this matter. Please contact me at (202) 622-7023 with any questions or comments.

Rev. Proc. 97-27 burden calculations:

Existing burden for 97-27:	3,000 respondents	9,633 hours
Plus: § 2.06	50 respondents	100 hours
Plus: § 3.03	5 respondents	2.5 hours
Plus: § 3.04	20 respondents	10 hours
Revised burden for Rev. Proc. 97-27	3,075 respondents	9,745.5 hours