



OFFICE OF
CHIEF COUNSEL

1

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. 2008-52

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. 97-36, 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 general, Rev. Proc. 2008-52 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 2.02 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.

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

Rev. Proc. 2008-52 burden calculations:

Existing burden for Rev. Proc.2008-52:	13,250 respondents	13,976 hours
Plus: § 2.02	5 respondents	2.50 hours
§ 2.05	50 respondents	25 hours
§ 2.08	300 respondents	600.00 hours
§ 2.09	50 respondents	200.00 hours
§ 2.10	150 respondents	150.00 hours
§ 2.11	250 respondents	250.00 hours
§ 2.20	10 respondents	5.00 hours
Revised burden for Rev. Proc. 2008-52	14,065 respondents	15,191.85 hours.