

SUPPORTING STATEMENT
Treatment of Services Under Section 482;
Allocation of Income and Deductions From Intangible Property;
Stewardship Expense

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This collection of information is required in order for taxpayers that adopt the services cost method or shared services arrangement under Treas. Reg. §1.482-9 (b) to satisfy regulatory requirements. It is also required in order for taxpayers that adopt such methods to avoid the imposition of section 482 accuracy-related penalties under section 6662(e).

Section 482 of the Internal Revenue Code provides that the IRS may distribute, apportion, or allocate income, deductions, credits or allowances between or among controlled taxpayers if it is necessary to prevent evasion of taxes or to clearly reflect income of the controlled taxpayers. Under the arm's length standard of §1.482-1(b)(1), an allocation under section 482 may be necessary to determine the true taxable income of a controlled taxpayer if the price charged in the controlled transaction under review does not provide an arm's length result.

Section 1.482-9 provides methods to determine the arm's length amount charged in controlled services transactions. Section 1.482-9 (b) provides the services cost method and shared services arrangement, which are optional methods available at the taxpayer's discretion. Section 1.482-9 (b) requires taxpayers that adopt the services cost method or the shared services arrangement to maintain certain documents, including statements evidencing their intention to apply such methods, as well as other documentation sufficient to permit verification by the Commissioner of the arm's length charge for such services.

Section 6662(b)(3) imposes an accuracy-related penalty on any substantial valuation misstatement described in §6662(e). Section 6662(e)(3)(B) provides that such a penalty may not apply to a net section 482 transfer pricing adjustment if the taxpayer meets the following conditions: (1) taxpayer reasonably applies a specified method prescribed under section 482; (2) taxpayer has documentation which sets forth the determination of such price in accordance with such method, and which establishes that such use was reasonable; and (3) taxpayer provides such documentation to the Secretary within 30 days of a request for such documentation. Section 1.6662-6 (d)(2) (ii)(B), which will also be finalized in this regulation package, clarifies that a taxpayer may reasonably conclude that the services cost method provides the most reliable measure of an arm's length result in a controlled services transaction only if it has made a reasonable effort to meet the conditions and requirements for application of this method as set forth in §1.482-9(b). The determination of whether the controlled taxpayer's conclusion is reasonable must be determined from all the facts and circumstances. The factors relevant to this determination include documentation submitted by the taxpayer to the IRS described in §§1.6662-6(d)(2)(iii)(B)(4) and (6).

2. USE OF DATA

The data will be used to confirm taxpayers' adoption of the services cost method or shared services arrangement, and permit verification by the Commissioner of the total services cost incurred by the renderer of such services.

Taxpayers must maintain such documentation in order to satisfy the documentation requirements contained in the net section 482 penalty exclusion provision under §1.6662-6(d).

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

The services cost method and shared services arrangement under §1.482-9(b) are designed specifically to reduce taxpayer transfer pricing analysis, administration, and documentation burden. Thus, any taxpayer (large or small) that adopts either of these methods will inherently have a simplified and reduced documentation and recordkeeping requirement than if they adopted another transfer pricing method for such controlled services. Furthermore, this inherently reduces taxpayers burden for satisfying the net section 482 penalty exclusion provision under §1.6662-6(d).

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

A notice of proposed rulemaking (REG-1486893-02 and REG-11503-00) were published in the *Federal Register* (68 FR 53448) on September 10, 2003, relating to the treatment of controlled services transactions and the allocation of income from intangible property, in particular with respect to contributions by a controlled party to the value of intangible property owned by another controlled party.

Temporary regulations (REG-146893-02, 115037-00, and 138603-03) relating to the treatment of controlled services transactions, the allocation of income from intangible property, and stewardship expenses were published in the *Federal Register* on August 4, 2006, at 71 FR 44466 as TD 9278. Comments received in response to the 2003 NPRM were summarized and addressed in the preamble. An NPRM cross-referencing this temporary regulation was published the same day at 71 FR 44247 to provide an additional comment period.

The temporary regulations were adopted at TD 9456 on August 4, 2009, at 74 FR 38830. Comments received in response to the 2006 regulations are summarized and addressed in the preamble.

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 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collection of information required in this regulation is in §1.482-9(b), and §§1.6662-6(d)(2)(iii)(B)(4) and (6). We estimate that these recordkeeping and documentation requirements will create an additional burden on approximately 1,000 taxpayers. We estimate that the average annual burden per recordkeeper will be 4.5 hours, resulting in a total burden of 4,500 hours.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

Estimates of annualized cost to respondent for the hour burdens shown are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

This is being submitted as a collection existing without an OMB number. A preapproval was granted on the notice of proposed rulemaking in July 2006. These regulations were published in August 2006 as “final and temporary regulations”; and later as “final

and removal of temporary regulations” in August 2009. The preapproval was not activated and we are making this submission to account for burden associated with these regulations. There are no changes to the burden originally identified in the preapproval.

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 regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the 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.