

# Proposed Rules

Federal Register

Vol. 74, No. 2

Monday, January 5, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 301

[REG-144615-02]

RIN 1545-BI47

#### Section 482: Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations, notice of proposed rulemaking, and notice of public hearing.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide further guidance and clarification regarding methods under section 482 to determine taxable income in connection with a cost sharing arrangement in order to address issues that have arisen in administering the current regulations. These temporary regulations potentially affect controlled taxpayers within the meaning of section 482 that enter into cost sharing arrangements as defined therein. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on those proposed regulations.

**DATES:** Written or electronic comments must be received by April 6, 2009. Outline of topics to be discussed at the public hearing scheduled for April 21, 2009 must be received by April 6, 2009.

**ADDRESSES:** Send submissions to: CC:PA:LDP:PR (REG-144615-02), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LDP:PR (REG-144615-02),

Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-144615-02).

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Kenneth P. Christman, (202) 435-5265; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearings, Oluwafunmilayo Taylor, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget.

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 control number assigned by the Office of Management and Budget.

The collection of information requirements are in proposed § 1.482-7(b)(2) and (k). Responses to the collections of information are required by the IRS to monitor compliance of controlled taxpayers with the provisions applicable to cost sharing arrangements.

*Estimated total annual reporting and/or recordkeeping burden:* 9350 hours.

*Estimated average annual burden hours per respondent and/or recordkeeper:* 18.7 hours.

*Estimated number of respondents and/or recordkeepers:* 500.

*Estimated frequency of responses:* On Occasion and Annually.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by March 6, 2009.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper

performance of the functions of the IRS, including whether the information will have practical utility; The accuracy of the estimated burden associated with the proposed collection of information (see above); How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information-technology; and Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

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.

#### Background and Explanation of Provisions

Temporary regulations In the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 482. The temporary regulations provide guidance regarding methods under section 482 to determine taxable income in connection with a cost sharing arrangement. These temporary regulations potentially affect controlled taxpayers within the meaning of section 482 that enter into cost sharing arrangements as defined therein. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined also that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule applies to U.S. businesses and foreign affiliates that enter into cost sharing agreements. Few small entities

are expected to enter into cost sharing agreements, as defined by these regulations. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 21, 2009, beginning at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(93) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments by April 6, 2009 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 6, 2009. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal author of these proposed regulations is Kenneth P. Christman of the Office of Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

### List of Subjects

#### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### Proposed Amendment to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*.

**Par. 2.** Section 1.367(a)–1 is revised to read as follows:

#### **§ 1.367(a)–1 Transfers to foreign corporations subject to section 367(a): In general.**

(a) through (d)(2) [Reserved].

(3) *Transfer.* For purposes of section 367 and regulations thereunder, the term *transfer* means any transaction that constitutes a transfer for purposes of section 332, 351, 354, 355, 356, or 361, as applicable. A person's entering into a cost sharing arrangement under § 1.482–7 or acquiring rights to intangible property under such an arrangement shall not be considered a transfer of property described in section 367(a)(1). See § 1.6038B–1T(b)(4) for the date on which the transfer is considered to be made.

(d)(4) through (g) [Reserved].

**Par. 3.** Section 1.482–0 is amended by revising the entries for §§ 1.482–1(b)(2)(iii), 1.482–2(e) and (f), 1.482–4(g) and (h), 1.482–7, and 1.482–9 to read as follows:

#### **§ 1.482–0 Outline of regulations under section 482.**

\* \* \* \* \*

#### **§ 1.482–1 Allocation of income and deductions among taxpayers.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) Coordination of methods applicable to certain intangible development arrangements.

#### **§ 1.482–2 Determination of taxable income in specific situations.**

\* \* \* \* \*

(e) Cost sharing arrangement.

(f) Effective/applicability date.

(1) In general.

(2) Election to apply paragraph (b) of this section to earlier taxable years.

#### **§ 1.482–4 Methods to determine taxable income in connection with a transfer of intangible property.**

\* \* \* \* \*

(g) Coordination with rules governing cost sharing arrangements.

(h) Effective/applicability date.

(1) In general.

(2) Election to apply regulation to earlier taxable years.

\* \* \* \* \*

#### **§ 1.482–7 Methods to determine taxable income in connection with a cost sharing arrangement.**

[The text of the proposed entries for § 1.482–7 is the same as the entries for § 1.482–7T in § 1.482–0T published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

#### **§ 1.482–9 Methods to determine taxable income in connection with a controlled services transaction.**

\* \* \* \* \*

(a) through (m)(2) [Reserved]

(3) [The text of the proposed entry for § 1.482–9(m)(3) is the same as the entry for § 1.482–9T(m)(3) in § 1.482–0T published elsewhere in this issue of the **Federal Register**.]

(m)(4) through (n)(3) [Reserved]

**Par. 4.** Section 1.482–1 is amended by:

1. Revising paragraph (b)(2)(i) and the last sentence of paragraph (j)(6)(i).

2. Adding a new paragraph (b)(2)(iii).

The addition and revisions read as follows:

#### **§ 1.482–1 Allocation of income and deductions among taxpayers.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) [The text of the proposed amendment to § 1.482–1(b)(2)(i) is the same as the text of § 1.482–1T(b)(2)(i) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(iii) [The text of the proposed § 1.482–1(b)(2)(iii) is the same as the text of § 1.482–1T(b)(2)(iii) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(j) \* \* \*

(6) \* \* \*

(i) \* \* \* \* \*. [The text of the proposed amendment to § 1.482–1(j)(6)(i) is the same as the text of the amendment to § 1.482–1T(j)(6)(i) published elsewhere in this issue of the **Federal Register**.]

**Par. 5.** Section 1.482–2 is amended as follows:

1. Paragraph (e) is redesignated as paragraph (f) and newly-designated paragraphs (f)(1) and (f)(2) are revised.

2. New paragraph (e) is added.

*The addition and revision reads as follows:*

**§ 1.482-2 Determination of taxable income in specific situations.**

\* \* \* \* \*

(e) [The text of proposed § 1.482-2(e) is the same as the text of § 1.482-2T(e) published elsewhere in this issue of the **Federal Register**].

(f) \* \* \* (1) [The text of the proposed amendment to § 1.482-2(f)(1) is the same as the text of § 1.482-2T(f)(1) published elsewhere in this issue of the **Federal Register**].

(2) [The text of the proposed amendment to § 1.482-2(f)(2) is the same as the text of § 1.482-2T(f)(2) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

**Par. 6.** Section 1.482-4 is amended as follows:

1. Paragraph (f)(3)(i)(B) is revised.

2. Paragraph (f)(7) is removed.

3. New paragraphs (g) and (h) are added.

*The additions and revision reads as follows:*

**§ 1.482-4 Methods to determine taxable income in connection with a transfer of intangible property.**

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

(i) \* \* \*

(B) [The text of the proposed amendment to § 1.482-4(f)(3)(i)(B) is the same as the text of § 1.482-4T(f)(3)(i)(B) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(g) [The text of proposed § 1.482-4(g) is the same as the text of § 1.482-4T(g) published elsewhere in this issue of the **Federal Register**].

(h) [The text of proposed § 1.482-4(h) is the same as the text of § 1.482-4T(h) published elsewhere in this issue of the **Federal Register**].

**Par. 7.** Section 1.482-7 is revised to read as follows:

**§ 1.482-7 Methods to determine taxable income in connection with a cost sharing arrangement.**

[The text of the proposed § 1.482-7 is the same as the text of § 1.482-7T(a) through (m) published elsewhere in this issue of the **Federal Register**].

**Par. 8.** Section 1.482-8 is amended by revising paragraph (b) *Examples 13, 14, 15, 16, 17 and 18* to read as follows:

**§ 1.482-8 Examples of the best method rule.**

\* \* \* \* \*

(b) \* \* \*

*Examples 13 through 18.* [The text of the proposed § 1.482-8(b) *Examples 13 through 18* is the same as the text of § 1.482-8T(b) *Examples 13 through 18* published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

**Par. 9.** Section 1.482-9 is added to read as follows:

**§ 1.482-9 Methods to determine taxable income in connection with a controlled services transaction.**

(a) through (m)(2) [Reserved].

(3) [The text of the proposed amendment to § 1.482-9(m)(3) is the same as the text of § 1.482-9T(m)(3) published elsewhere in this issue of the **Federal Register**].

(m)(4) through (n)(3) [Reserved].

**L E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E8-30712 Filed 12-31-08; 11:15 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 67**

[Docket ID FEMA-2008-0020; Internal Agency Docket No. FEMA-B-1028]

**Proposed Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be

used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before April 6, 2009.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1028, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151, or (e-mail) [bill.blanton@dhs.gov](mailto:bill.blanton@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:**

William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151 or (e-mail) [bill.blanton@dhs.gov](mailto:bill.blanton@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

*Administrative Procedure Act Statement.* This matter is not a rulemaking governed by the