

■ 4. The last sentence of paragraph (g)(2) Example 2. (iii) is revised.

■ 5. The table of paragraph (k)(3) Example 2. (iii) is revised.

The revisions read as follows:

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

* * * * *

(b) * * *

(8) * * *

Example 22. (i) * * * Company P's total services cost for services A, B, C, and D charged within the group is 100.

* * * * *

(e) * * *

(4) * * *

Example 4. * * *

(ii) * * *

Category	Rate
Project managers	\$100 per hour.
Technical staff	\$75 per hour.

* * * * *

(g) * * *

(2) * * *

Example 2. * * *

(iii) * * * In an effort to submit a winning bid to secure the contract, Company B points to its Level 2 license and its record of successful completion of projects, and also demonstrates to Country 2 government that it has access to substantial technical expertise pertaining to processing of Level 1 waste.

* * * * *

(k) * * *

(3) * * *

Example 2. * * *

(iii) * * *

Company	A	B	Total
Allocation	400/500	100/500
Amount	80	20	100

* * * * *

■ Par. 6. Section 1.861-8 is amended by revising the fourth sentence of paragraph (g). Example 17. (ii)(A) to read as follows:

§ 1.861-8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(g) * * *

Example 17. * * *

(ii) * * *

(A) * * * For purposes of applying the foreign tax credit limitation, the statutory grouping is general category gross income from sources without the United States and the residual grouping is gross income from sources with in the United States. * * *

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9456]

RIN 1545-B178, 1545-B179, 1545-B180

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

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 9456) that were published in the **Federal Register** on Tuesday, August 4, 2009 (74 FR 38830) providing guidance regarding the treatment of controlled services transactions under section 482 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. These final regulations modify regulations under section 861 concerning stewardship expenses to be consistent with the changes made to the guidance under section 482.

DATES: This correction is effective on September 9, 2009, and is applicable on August 4, 2009.

FOR FURTHER INFORMATION CONTACT:

Carol B. Tan or Gregory A. Spring, (202) 435-5265 for matters relating to section 482, or Richard L. Chewning, (202) 622-3850 for matters relating to stewardship expenses (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under sections 482, 861, 6038, and 6662 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9456) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9456), which was the subject of FR Doc. E9-18326, is corrected as follows:

1. On page 38830, column 1, in the title, the language “Treatment of

Services Under Section 482; Allocation of Income and Deductions From Intangible Property; Stewardship Expense” is corrected to read “Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangible Property; Apportionment of Stewardship Expense”.

2. On page 38830, column 3, in the preamble, under the paragraph heading “Background”, first paragraph of the column, third line from the bottom of the paragraph, the language “years after December 31, 2006) as the” is corrected to read “years beginning after December 31, 2006) as the”.

3. On page 38832, column 1, in the preamble, under the paragraph heading “e. Business Judgment Rule”, first paragraph, eleventh line, the language “one or more trades or business of the” is corrected to read “one or more trades or businesses of the”.

4. On page 38833, column 1, in the preamble, under the paragraph heading “g. Shared Services Arrangements”, second paragraph, fifth line, the language “under an SSA to the service provider” is corrected to read “under a SSA to the service provider”.

5. On page 38835, column 2, in the preamble, under the paragraph heading “7. Controlled Services Transactions and Shareholder Activities—Treas. Reg. § 1.482-9(l)”, second paragraph of the column, lines 1 and 2 from the bottom of the paragraph, the language “aggregate activity; rather than a component activity-by-activity basis.” is corrected to read “aggregate-activity basis; rather than a component activity-by-activity basis.”.

6. On page 38835, column 3, in the preamble, under the paragraph heading “b. Global Dealing Operations”, last line of the paragraph, the language “of global

dealing regulations.” is corrected to read “of new global dealing regulations.”.

7. On page 38837, column 1, in the first paragraph heading, the language “*D. Stewardship Expenses—§ 1.861–8*” is corrected to read “*D. Apportionment of Stewardship Expenses—§ 1.861–8*”.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9460]

RIN 1545–BD67

Declaratory Judgments—Gift Tax Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 7477 of the Internal Revenue Code (Code) regarding petitions filed with the United States Tax Court for declaratory judgments with respect to the valuation of gifts. Changes to the applicable law were made by section 506(c)(1) of the Taxpayer Relief Act of 1997. These final regulations primarily affect individuals who are donors of gifts. The final regulations provide rules for determining whether a donor may petition the Tax Court for a determination regarding the value of a gift, including guidance regarding the definition of “exhaustion of administrative remedies.”

DATES: *Effective date:* These regulations are effective September 9, 2009.

Applicability date: For the date of applicability, see § 301.7477–1(f).

FOR FURTHER INFORMATION CONTACT: Deborah S. Ryan or George Masnik (202) 622–3090 (not a toll free number).

Background

Section 7477, enacted in conjunction with other provisions as part of the Taxpayer Relief Act of 1997 (TRA) (Pub. L. 105–34, 111 Stat. 855), provides a declaratory judgment procedure pursuant to which taxpayers may contest in the United States Tax Court an IRS determination regarding the value of a gift. Prior law did not provide a judicial remedy in situations where the proposed IRS adjustment would not

result in a gift tax deficiency or a tax overpayment. The new procedure applies, for example, where an increase in gift tax determined under section 2502 is offset by the taxpayer’s applicable credit amount under section 2505(a), so that no additional tax is assessed as a result of a valuation increase. Because there is no tax deficiency, in the absence of section 7477, the taxpayer would be unable to challenge the IRS determination, even though, upon the expiration of the statute of limitations, that determination would become binding for purposes of calculating the cumulative gift tax on all future gifts of that taxpayer, as well as the taxpayer’s estate tax liability. See H.R. Conf. Rep. No. 105–220, at 407–408 (1997).

On June 9, 2008, proposed regulations under section 7477 were published in the **Federal Register** (REG–143716–04, 73 FR 32503, 2008–25 IRB 1170). The IRS received no written or oral comments responding to the notice of proposed rulemaking. No public hearing was requested or held.

The final regulations include a few clarifications. In particular, under section 7477, in order to be eligible for the declaratory judgment procedure, the Tax Court must determine that the donor exhausted all administrative remedies. In general, the proposed regulations provide that the IRS will consider a donor to have exhausted all administrative remedies if an Appeals conference is requested timely and the donor (or an authorized representative) “participates fully” in the Appeals process. The final regulations contain a separate subsection specifying that full participation requires timely submission of requested information and disclosure of all relevant information regarding the controversy. In addition, a provision has been added specifying that, if Appeals does not grant the donor’s request for a conference, the donor will be treated as having exhausted all administrative remedies if, after filing a Tax Court petition for a declaratory judgment, the donor (or authorized representative) participates fully in the Appeals office consideration when offered by the IRS while the case is in docketed status.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small

entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these final regulations are Deborah Ryan and Juli Ro Kim, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. Other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

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

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 2.** Section 301.7477–1 is revised to read as follows:

§ 301.7477–1 Declaratory judgments relating to the value of certain gifts for gift tax purposes.

(a) *In general.* If the adjustment(s) proposed by the Internal Revenue Service (IRS) will not result in any deficiency in or refund of the donor’s gift tax liability for the calendar year, and if the requirements contained in paragraph (d) of this section are satisfied, then the declaratory judgment procedure under section 7477 is available to the donor for determining the amount of one or more of the donor’s gifts during that calendar year for Federal gift tax purposes.

(b) *Declaratory judgment procedure—*
(1) *In general.* If a donor does not resolve a dispute with the IRS concerning the value of a transfer for gift tax purposes at the Examination level, the donor will be sent a notice of preliminary determination of value (Letter 950–G or such other document as may be utilized by the IRS for this purpose from time to time, but referred to in this section as Letter 950–G), inviting the donor to file a formal