

National Futures Association, the Disclosure Document for each trading program that it offers or that it intends to offer not less than 21 calendar days prior to the date the trading advisor first intends to deliver the Document to a prospective client in the trading program; and

(2) The commodity trading advisor must electronically file with the National Futures Association, pursuant to the electronic filing procedures of the National Futures Association, the subsequent amendments to the Disclosure Document for each trading program that it offers or that it intends to offer within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect requiring the amendment.

Issued in Washington, DC on February 27, 2009 by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. E9-4740 Filed 3-4-09; 8:45 am]

**BILLING CODE 6351-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9441]

RIN 1545-BI46

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

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

**ACTION:** Correction to final and temporary regulations.

**SUMMARY:** This document contains corrections to final and temporary regulations (TD9441) that were published in the **Federal Register** on Monday, January 5, 2009 providing 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. The temporary regulations affect domestic and foreign entities that enter into cost sharing arrangements described in the temporary regulations.

**DATES:** This correction is effective March 5, 2009, and is applicable on January 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kenneth P. Christman, (202) 435-5265 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The final and temporary regulations that are the subject of this document are under sections 367 and 482 of the Internal Revenue Code.

### Need for Correction

As published, final and temporary regulations (TD 9441), published Monday, January 5, 2009 (74 FR 340), contains errors that may prove to be misleading and are in need of clarification.

### Correction of Publication

#### **PART 1—[CORRECTED]**

Accordingly, the publication of the final and temporary regulations (TD 9441), which was the subject of FR Doc. E8-30715, is corrected as follows:

1. On page 346, column 2, in the preamble, under the paragraph heading “4. Acquisition Price and Market Capitalization Methods—Temp. Treas. Reg. § 1.482-7T(g)(5) and (6), third paragraph of the column, line 17, the language “PCT Payor’s, nonroutine contributions” is corrected to read “PCT Payee’s, nonroutine contributions”.

2. On page 347, column 1, in the preamble, the language of the paragraph heading “2. Contingent Payments—Temp. Treas. Reg. § 1.482-7T(h)(2)(iv) and (v)” is corrected to read “2. Contingent Payments—Temp. Treas. Reg. § 1.482-7T(h)(2)(iii) and (iv)”.

3. On page 348, column 2, in the preamble, under the paragraph heading “Special Analyses”, last paragraph of the column, line 13, the language “preamble to the cross-reference notice of” is corrected to read “preamble to the cross-referenced notice of”.

4. On page 348, column 3, in the preamble, under the paragraph heading “Drafting Information”, second paragraph of the column, line 2, the language “proposed regulations is Kenneth P.” is corrected to read “temporary regulations is Kenneth P.”.

**LaNita Van Dyke,**

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Legal Processing Division, Associate Chief  
Counsel, (Procedure and Administration).*

[FR Doc. E9-4656 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9441]

RIN 1545-BI46

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

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

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to final and temporary regulations (TD9441) that were published in the **Federal Register** on Monday, January 5, 2009 (74 FR 340) providing 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. The temporary regulations affect domestic and foreign entities that enter into cost sharing arrangements described in the temporary regulations.

**DATES:** This correction is effective March 5, 2009, and is applicable on January 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kenneth P. Christman, (202) 435-5265 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The final and temporary regulations that are the subject of this document are under sections 367 and 482 of the Internal Revenue Code.

### Need for Correction

As published, final and temporary regulations (TD 9441) contains errors that may prove to be misleading and are in need of clarification.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

#### **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 1.482-0T is amended by revising the entries of § 1.482-2T(f)(2) and § 1.482-7T (e), (g)(2)(ix)(D)(2), (g)(4)(i)(D), and (h)(3)(vi)(B) as follows:

**§ 1.482-0T Outline of regulations under section 482 (temporary).**

\* \* \* \* \*

**§ 1.482-2T Determination of taxable income in specific situations (temporary).**

\* \* \* \* \*

(f) \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

(e) Reasonably anticipated benefits share.

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(ix) \* \* \*

(D) \* \* \*

(2) One variable input parameter.

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(D) Only one controlled participant with nonroutine platform contributions.

\* \* \* \* \*

(h) \* \* \*

(3) \* \* \*

(vi) \* \* \*

(B) Circumstances in which Periodic Trigger deemed not to occur.

\* \* \* \* \*

■ **Par. 3.** Section 1.482-7A is amended by revising the applicable date as follows:

**§ 1.482-7A Sharing of costs.**

Regulations applicable on or before January 4, 2009.

\* \* \* \* \*

■ **Par. 4.** Section 1.482-7T is amended as follows:

■ 1. Paragraph (b)(5)(iii) *Example 4.* (i) is revised.

■ 2. The fifth sentence of paragraph (b)(5)(iii) *Example 4.* (iii) is revised.

■ 3. The first two sentences of paragraph (c)(3) are revised.

■ 4. The last sentence of paragraph (g)(4)(i)(E) is revised.

■ 5. The second sentence of paragraph (g)(4)(i)(F)(1) is revised.

■ 6. The first sentence of paragraph (g)(4)(vi) is revised.

■ 7. The first sentence of paragraph (g)(7)(v) *Example 1.* (i) is revised.

■ 8. The seventh sentence of paragraph (g)(7)(v) *Example 1.* (ii) is revised.

■ 9. The last sentence of paragraph (g)(7)(v) *Example 1.* (iii) is revised.

■ 10. The last sentence of paragraph (g)(7)(v) *Example 1.* (iv) is revised.

■ 11. The last sentence of paragraph (g)(7)(v) *Example 2.* (iii) is revised.

■ 12. The second, fourth and last sentences of paragraph (g)(7)(v) *Example 2.* (iv) are revised.

■ 13. The first sentence of paragraph (k)(1)(iv)(B) *Example 1.* is revised.

■ 14. The first sentence of paragraph (k)(1)(iv)(B) *Example 2.* is revised.

■ 15. Paragraph (k)(1)(iv)(B) *Example 2.* (i) is revised.

■ 16. The first sentence of paragraph (k)(3)(ii) is revised.

■ 17. Paragraph (k)(4)(i) is revised.

■ 18. Paragraph (m)(2)(viii) is revised.

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

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(iii) \* \* \*

*Example 4.* \* \* \*

(i) The facts are the same as in *Example 1* except that P does not own proprietary software and P and S use a method for determining the arm's length amount of the PCT Payment for the P-Cap patent rights different from the method used in *Example 1.*

\* \* \* \* \*

(iii) \* \* \* See § 1.482-4(c)(4). \* \* \*

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \* For purposes of § 1.482-1(b)(2)(ii) and paragraph (a)(2) of this section, a PCT must be identified by the controlled participants as a particular type of transaction (for example, a license for royalty payments). See paragraph (k)(2)(ii)(H) of this section.

\* \* \* \* \*

(g) \* \* \*

(4) \* \* \*

(i) \* \* \*

(E) \* \* \* For converting to another form of payment, see generally § 1.482-7T(h) (Form of payment rules).

(F) \* \* \*

(1) \* \* \* See, for example, § 1.482-7T(g)(2)(v)(B)(1) (Discount rate variation between realistic alternatives). \* \* \*

\* \* \* \* \*

(vi) \* \* \* For purposes of this paragraph (g)(4), any routine contributions that are platform or operating contributions, the valuation and PCT Payments for which are determined and made independently of the income method, are treated similarly to cost contributions and operating cost contributions, respectively. \* \* \*

\* \* \* \* \*

(7) \* \* \*

(v) \* \* \*

*Example 1.* \* \* \*

(i) USP, a U.S. electronic data storage company, has partially developed technology for a type of extremely small compact storage devices (nanodisks) which are expected to provide a significant increase in data storage capacity in various types of portable devices such as cell phones, MP3 players, laptop computers and digital cameras. \* \* \*

(ii) \* \* \* FS undertakes routine distribution activities in its markets that constitute routine contributions to the relevant business activity of exploiting nanodisk technologies. \* \* \*

(iii) \* \* \* Therefore, the present value of the nonroutine residual divisional profit is \$1.336 billion.

(iv) \* \* \* Therefore, FS's PCT payments should have an expected present value equal to \$802 million (.6 × \$1.336 billion).

*Example 2.* \* \* \*

(iii) \* \* \* Therefore, the present value of the nonroutine residual divisional profit in USP's territory is \$39,243X and in CFC's territory is \$19,622X (for simplicity of calculation in this example, all financial flows are assumed to occur at the beginning of each period).

(iv) \* \* \* Consequently, the present value of the arm's length amount of the PCT payments that USP should pay to FS for FS's platform contribution is \$10,007X (.255 × \$39,243X). \* \* \* Consequently, the present value of the arm's length amount of the PCT payments that FS should pay to USP for USP's platform contribution is \$12,362 (.63 × \$19,622X). Therefore, FS is required to make a net payment to USP with a present value of \$2,355X (\$12,362X - \$10,007X).

\* \* \* \* \*

(k) \* \* \*

(1) \* \* \*

(iv) \* \* \*

(B) \* \* \*

*Example 1.* The contractual provisions recorded upon formation of an arrangement that purports to be a CSA provide that PCT payments with respect to a particular platform contribution will consist of payments contingent on sales. \* \* \*

*Example 2.* An arrangement that purports to be a CSA provides that PCT payments with respect to a particular platform contribution shall be contingent payments equal to 10% of sales of products that incorporate cost shared intangibles. \* \* \*

(i) The contingent payment terms with respect to the platform contribution do not have economic substance because the controlled participants did not act in accordance with their upfront risk allocation; or

\* \* \* \* \*

(3) \* \* \*

(ii) \* \* \* For purposes of this section, the controlled participants may not rely solely upon financial accounting to establish satisfaction of the accounting requirements of this paragraph (k)(3).

\* \* \*

(4) \* \* \*

(i) \* \* \* Each controlled participant must file with the Internal Revenue Service, in the manner described in this paragraph (k)(4), a "Statement of Controlled Participant to § 1.482-7T Cost Sharing Arrangement" (CSA

Statement) that complies with the requirements of this paragraph (k)(4).

\* \* \* \* \*

(m) \* \* \*

(2) \* \* \*

(viii) Paragraph (k)(4)(iii)(A) of this section shall be construed as requiring a CSA Statement with respect to the revised written contractual agreement

described in paragraph (m)(2)(vi) of this section no later than September 2, 2009.

\* \* \* \* \*

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. E9-4686 Filed 3-4-09; 8:45 am]

**BILLING CODE 4830-01-P**