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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-129447-01

RIN 1545-BA02

Allocation and Apportionment of Expenses; Alternative Method for Determining Tax Book Value of Assets

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations 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 providing an alternative method of valuing assets for purposes of apportioning expenses under the tax book value method of §1.861-9T. The alternative tax book value method, which is elective, allows taxpayers to determine, for purposes of apportioning expenses, the tax book value of all tangible property that is subject to a depreciation deduction under section 168 by using the straight line method, conventions, and recovery periods of the alternative depreciation system under section 168(g)(2). The alternative method provided in the temporary regulations is intended to minimize basis disparities

between foreign and domestic assets of taxpayers that may arise when taxpayers use adjusted tax basis to value assets under the tax book value method of expense apportionment. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by June 24, 2004. Outlines of topics to be discussed at the public hearing scheduled for July 19, 2004, at 10 a.m. must be received by June 28, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-129447-01), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-129447-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS internet site at www.irs.gov/regs. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Margaret A. Hogan, (202) 622-3850; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Robin Jones, (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR Part 1. The temporary regulations provide an alternative method of valuing assets for purposes of apportioning expenses under the tax book value method of §1.861-9T. The text of the temporary regulations also serves as the text of these regulations. The preamble of the temporary regulations explains the temporary regulations and these proposed regulations.

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 also 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 the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

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

A public hearing has been scheduled for July 19, 2004, beginning at 10 a.m. in the IRS Auditorium of the 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 more 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)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by June 24, 2004, 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 June 28, 2004. A period of 10 minutes will be allotted to each person

for making comments. An agenda showing the scheduling 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 Margaret A. Hogan, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for §1.861-9 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

Sections 1.861-9 and 1.861-9T also issued under 26 U.S.C. 863(a), 26 U.S.C. 864(e), 26 U.S.C. 865(i), and 26 U.S.C. 7701(f). * * *

Par. 2. Section 1.861-9 is amended by revising paragraph (g)(1)(ii) introductory text, and adding paragraphs (h)(6), (i) and (j) to read as follows:

§1.861-9 Allocation and apportionment of interest expense.

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(g) * * * (1) * * * (i) * * *

(ii) * * * [The text of the proposed revision of §1.861-9(g)(1)(ii) is the same as the second sentence of §1.861-9T(g)(1)(ii) published elsewhere in this issue of the Federal Register.] * * *

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(h)(6) [Reserved]. For further guidance see, §1.861-9T(h)(6).

(i) [The text of the proposed addition of §1.861-9(i) is the same as §1.861-

9T(i)(1) through (i)(3)(i) published elsewhere in this issue of the Federal Register.]

(j) [Reserved]. For further guidance, see §1.861-9T(j).

/s/ Mark E. Matthews

Deputy Commissioner for Services
and Enforcement