26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, §§ 864; 1.861–8T; 1.861–9T.)

Rev. Proc. 2005–28

SECTION 1. PURPOSE

This revenue procedure sets forth the administrative procedure under which a taxpayer described in § 3 of this revenue procedure may obtain automatic consent to change from the fair market value method to the alternative tax book value method of valuing assets for purposes of apportioning expenses pursuant to § 1.861–9T(g) of the Temporary Income Tax Regulations. Accordingly, taxpayers that change from the fair market value method to the alternative tax book value method pursuant to this revenue procedure will be treated as expressly authorized by the Commissioner to change methods. This automatic consent procedure applies to changes in apportionment method requested for taxable years beginning on or after March 26, 2004, but before March 26, 2006, and for which a return has not previously been filed.

SECTION 2. BACKGROUND

.01 Section 864(e)(2) of the Internal Revenue Code provides that allocation and apportionment of interest expense is made on the basis of assets rather than on the basis of gross income. For this purpose, §§ 1.861–8T(c)(2) and 1.861–9T(g)(1)(ii) of the temporary regulations permit a taxpayer to elect to compute the value of its assets under either the tax book value method or the fair market value method. A taxpayer using the tax book value method may elect to change to the fair market value method at any time. *See* Rev. Proc. 2003–37, 2003–1 C.B. 950. However, § 1.861–8T(c)(2) provides that a taxpayer electing to use the fair market value method must continue to use that method unless expressly authorized by the Commissioner to change methods.

.02 On March 26, 2004, the Treasury Department and the Internal Revenue Service (IRS) published temporary regulations in the Federal Register (T.D. 9120, 2004–19 C.B. 881 [69 FR 15673]). These regulations amended §1.861–9T by adding §1.861–9T(i). Section 1.861–9T(i) provides an alternative method of determining the tax book value of assets (the "alternative tax book value method"). Prior to the issuance of the temporary regulations, a taxpayer could value assets under one of two methods: the fair market value method and the regular tax book value method. The alternative tax book value method set forth in the temporary regulations is a third method which allows a taxpayer to elect to determine the tax book value of its tangible property that is subject to a depreciation deduction under § 168 as though all such property had been depreciated using the straight line method, conventions, and recovery periods of the alternative depreciation system of § 168(g). The alternative tax book value method therefore provides a taxpayer with the option of determining the adjusted bases of both foreign and domestic assets under one consistent depreciation method and helps minimize basis disparities that may arise under the regular tax book value method. The alternative tax book value method applies solely for purposes of apportioning expenses (including the calculation of the alternative minimum tax foreign tax credit pursuant to § 59(a) of the Code) under the asset method described in § 1.861–9T(g).

.03 Section 1.861–9T(i)(2)(i) generally allows a taxpayer to elect to value its assets using the alternative tax book value method with respect to any taxable year beginning on or after March 26, 2004. However, under § 1.861–8T(c)(2), a taxpayer using the fair market value method must obtain the consent of the Commissioner to change methods, including a change to the alternative tax book value method.

.04 The preamble to the temporary regulations states that the Treasury Department and the IRS intend to issue a revenue procedure to provide temporary rules granting taxpayers automatic consent to change from the fair market value method to the alternative tax book value method. Accordingly, this revenue procedure provides temporary rules for obtaining automatic consent to change from the fair market value method to the alternative tax book value method of valuing assets pursuant to § 1.861–9T(g)(1)(ii). Notwithstanding these temporary rules for obtaining automatic consent, a taxpayer may request, under the regular ruling process, the consent of the Commissioner to change from the fair market value method to the regular tax book value method or the alternative tax book value method. These temporary rules do not affect the ability of taxpayers currently valuing assets under the regular tax book value method to make a change to the alternative tax book value method with respect to any taxable year beginning on or after March 26, 2004.

SECTION 3. SCOPE

.01 This revenue procedure applies to any taxpayer requesting to change from the fair market value method to the alternative tax book value method of asset valuation for a taxable year beginning on or after March 26, 2004, but before March 26, 2006, for which no return has previously been filed.

SECTION 4. APPLICATION

.01 A taxpayer within the scope of this revenue procedure is granted the consent of the Commissioner to change to the alternative tax book value method provided that the other conditions of this § 4 are satisfied.

.02 A corporation described in § 3.01 shall request to change to the alternative tax book value method on a timely filed Form 1118 by selecting that asset valuation method on Part II of Schedule H and attaching to Form 1118 the statement set forth in § 4.04. In the case of such taxpayers electronically filing Form 1118, the statement must be included in the electronic version of Form 1118.

.03 A taxpayer, other than a corporation, described in § 3.01 shall request to change to the alternative tax book value method on a timely filed Form 1116 by attaching to Form 1116 the statement set forth in § 4.04. In the case of such taxpayers electronically filing Form 1116, the statement must be entered into the Election Explanation Record of the electronic version of Form 1040, Form 1041, or other relevant form.

.04 The statement referred to in §§ 4.02 and 4.03 shall provide as follows: "For the immediately preceding tax year, [name of taxpayer] valued assets for expense apportionment purposes using the fair market value method. Pursuant to Rev. Proc. 2005–28, [name of taxpayer] is changing from the fair market value method to the alternative tax book value method of asset valuation. This change to the alternative tax book value method applies prospectively beginning with [name of taxpayer]'s [XXXX] taxable year."

.05 Any taxpayer that changes to the alternative tax book value method under this revenue procedure must maintain all documentation necessary to establish its change in valuation methods and its eligibility for the benefits of this revenue procedure.

SECTION 5. EFFECTIVE DATE

.01 This revenue procedure is effective for requests to change from the fair market value method to the alternative tax book value method for taxable years beginning on or after March 26, 2004, but before March 26, 2006, for which no return has previously been filed.

SECTION 6. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1944.

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 OMB control number.

The collections of information in this revenue procedure are in § 4. They are required to enable the IRS to determine whether the taxpayer is eligible for an automatic change from the fair market value method to the alternative tax book value method. The information will also inform revenue agents as to the years for which the alternative tax book value method is being adopted. The collections of information are required in order to obtain the benefit of the alternative tax book valuation method. The likely respondents are businesses.

The estimated total annual reporting and/or recordkeeping burden is 100 hours. The estimated annual burden per respondent and/or recordkeeper is an estimated average of .5 hours. The estimated number of respondents and/or recordkeepers is 200. The estimated frequency of response is occasional.

Books and records relating to a collection of information must be retained as long as their statements may become material in the administration of any internal revenue law. Generally, tax returns and tax information are confidential, as required by 26 U.S.C. § 6103.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Margaret A. Hogan of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Margaret A. Hogan at (202) 622–3850 (not a toll-free call).