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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9568]

RIN 1545-BI47

Section 482; Methods to Determine Taxable Income in Connection With a Cost Sharing Arrangement; Correction

AGENCY: Internal Revenue Service (IRS).

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9568), which were published in the **Federal Register** on Thursday, December 22, 2011 (76 FR 80082), Relating to section 482 and methods to determine taxable income in connection with a cost sharing arrangement.

DATES: Effective [insert date of publication in the Federal Register], and applicable beginning December 22, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph L. Tobin at (202) 435-5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 482 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9568), contains errors which 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

Accordingly, 26 CFR Parts 1 and 301 are 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 USC 7805 * * *

PART 1 [Corrected].

Par. 2. Section 1.482-1 is amended by revising the first and second sentences of paragraph (b)(2)(i) to read as follows:

§1.482-1 Allocation of income and deductions among taxpayers.

* * * * *

(b) * * *

(2) * * *

(i) Methods. Sections 1.482-2 through 1.482-7 and 1.482-9 provide specific methods to be used to evaluate whether transactions between or among members of the controlled group satisfy the arm's length standard, and if they do not, to determine the arm's length result. This section provides general principles applicable in determining arm's length results of such controlled transactions, but

do not provide methods, for which reference must be made to those other sections in accordance with paragraphs (b)(2)(ii) and (iii) of this section. * * *

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Par. 3. Section 1.482-7 is amended by:

1. Revising the fourth sentence of paragraph (c)(3).
2. Revising the fifth sentence of paragraph (g)(2)(v)(C), Example, paragraph (i).
3. Revising the first sentence of paragraph (g)(2)(v)(C), Example, paragraph (ii).
4. Revising paragraph (k)(2)(ii)(3).

The revisions read as follows:

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

* * * * *

(c) * * *

(3) * * * If the conduct is consistent with different , economically equivalent types of transactions then the controlled participants may designate the PCT as being any of such types of transactions. * * *

* * * * *

(g) * * *

(2) * * *

(v) * * *

(C) * * *

Example. (i) * * * Specifically, the Commissioner compares P's anticipated post-tax discounted present value of the financial projections under the CSA (taking into account S's PCT payment of 5% of its sale of product Y) with P's anticipated post-tax discounted present value of the financial projections under a reasonably available licensing alternative that consists of developing intangible X on its own and then licensing X to S or to an uncontrolled party similar to S.

* * *

(ii) The Commissioner determines that, as between the two scenarios, all of the components of P's anticipated financial flows are identical, except for the CST and PCT Payments under the CSA, compared to the licensing payments under the licensing alternative. * * *

* * * * *

(3) * * *

(viii) * * *

Example 3. * * * FS determines that the discount rate that would be applied to determine the present value of income and costs attributable to its participation in the licensing alternative would be 12.5% as compared to the 15% discount rate that would be applicable in determining the present value of the net income attributable to its participation in the CSA (reflecting the increased risk borne by FS in bearing a share of the R & D costs in the cost sharing alternative).

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(k) * * *

(2) * * *

(ii) * * *

(3) Any further development of intangibles already developed under the CSA or of specified applications of such intangible which has been removed from the IDA (see paragraphs (d)(1)(ii) and (j)(1)(i) of this section for the definitions of reasonably anticipated cost shared intangible and cost shared intangible) and the steps (including any accounting classifications and allocations) taken to implement such removal;

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