

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also: Part I, §§ 482; 1.482-9T.)

Rev. Proc. 2007-13

SECTION 1. PURPOSE

This revenue procedure identifies specified covered services within the meaning of Temp. Treas. Reg. § 1.482-9T(b)(4)(i). The activities identified in this revenue procedure are support services common among taxpayers in a variety of industry sectors, and generally do not involve a significant arm's length markup on total services costs. Services identified in this revenue procedure must meet the other conditions set forth in Temp. Treas. Reg. § 1.482-9T(b) to be evaluated under the services cost method.

SECTION 2. BACKGROUND

The section 482 regulations provide pricing methods for transactions between controlled parties, including transactions involving services. The existing regulations for

transactions involving services were issued in 1968. Section 1.482-2(b) of the existing regulations provides a “cost safe harbor” that permits certain “non-integral” services to be priced at cost. In 2003, the Treasury Department and IRS issued proposed regulations that set forth a simplified cost based method (SCBM) intended to preserve some benefits of the current Treas. Reg. § 1.482-2(b) cost safe harbor. A number of commentators noted that SCBM called for quantitative judgments that business people are not qualified to make by themselves. As a practical matter, taxpayers would be required to devote significant compliance resources to enlist outside consultants or otherwise to develop support for those judgments.

In 2006, the Treasury Department and the IRS issued temporary regulations that eliminated the SCBM and replaced it with the services cost method (SCM), as set forth in Temp. Treas. Reg. § 1.482-9T(b). The Treasury Department and IRS recognized that because the section 482 services regulations potentially affect a large volume of intragroup back office services that are common across many industries, it is in the interest of sound tax administration to minimize the compliance burden of such services, which would typically bear low arm’s length markups.

The SCM evaluates whether the price for covered services, as defined, is arm’s length by reference to the total services costs with no markup. Section 1.482-9T(b)(4) of the temporary regulations provides for two categories of covered services eligible for the SCM. The first category is described in Temp. Treas. Reg. § 1.482-9T(b)(4)(i) and consists of specified covered services that will be identified in this revenue procedure. These specified covered services are so identified because they constitute support

services of a type common across industry sectors that generally do not involve a significant arm's length markup on total services costs. A second category of services described in Temp. Treas. Reg. § 1.482-9T(b)(4)(ii), low margin covered services, has a median comparable arm's length markup on total services costs of less than or equal to 7 percent. The second category is not addressed in this revenue procedure.

The Internal Revenue Service identified forty-eight activities that constitute specified covered services in a proposed revenue procedure included in Announcement 2006-50, which was published in the Internal Revenue Bulletin on August 21, 2006 (2006-34 I.R.B. 321). A number of public comments were received with respect to the SCM in general and Announcement 2006-50.

Notice 2007-5, issued contemporaneously with this Revenue Procedure, contains clarifications concerning several provisions related to the SCM. In addition, the Notice partially modifies the effective date of the temporary regulations. Subject to the exceptions described below, the effective date of the temporary regulations, insofar as they pertain to the identification of controlled services eligible to be priced at cost, is moved back one year. The provisions related to the SCM in Temp. Treas. Reg. § 1.482-9T(b) will thus apply to taxable years beginning after December 31, 2007. The only SCM provision that has immediate effect, i.e., for taxable years beginning after December 31, 2006, is the business judgment rule in Temp. Treas. Reg. § 1.482-9T(b)(2).

The net effect of this modification is that, for taxable years with beginning dates from January 1, 2007 to December 31, 2007, taxpayers may apply the existing

regulations in Treas. Reg. § 1.482-2(b) for purposes of identifying controlled services that are eligible to be priced on a cost basis, without a markup. For such taxable years, any services priced at cost must be “non-integral” within the meaning of existing Treas. Reg. § 1.482-2(b)(7), and they must also satisfy the SCM business judgment test in Temp. Treas. Reg. § 1.482-9T(b)(2).

Alternatively, for tax years beginning between January 1, 2007 and December 31, 2007, taxpayers may elect to apply the SCM as set forth in Temp. Treas. Reg. § 1.482-9T(b), without taking into account any of the modifications described in the previous two paragraphs.

A number of commentators stated that the list of specified covered services in Announcement 2006-50 was too narrow. In response to comments, this revenue procedure significantly broadens the existing categories and adds a number of new activities to the list of specified covered services. In addition, a provision covering “other similar activities” has been added to each category of activities.

SECTION 3. SCOPE

The following categories of services are eligible for treatment as specified covered services under Temp. Treas. Reg. § 1.482-9T(b)(4)(i):

Payroll:

1. Compiling and posting employee time and other information needed to calculate periodic compensation to employees. Computing employees' time worked, production, and commissions. Computing and posting wages and deductions to

appropriate accounting records. Preparing paychecks, travel reimbursement and expense reimbursement.

2. Preparing payroll tax forms (such as the preparation of Forms 940, 941 and W-2 in order to comply with U.S. requirements or similar requirements under another country's laws).
3. Administering garnishment and other wage withholding orders.
4. Other activities similar to those specified in paragraphs (1) through (3).

Premiums for Unemployment, Disability and Workers Compensation:

5. Processing employees' unemployment insurance premiums, disability premiums and workers compensation premiums.
6. Other activities similar to those specified in paragraph (5).

Accounts Receivable:

7. Compiling, analyzing and recording current credit data and other financial information regarding individuals or firms (including preparing reports with this information for use in decisionmaking).
8. Compiling and recording billing, accounting and other numerical data for billing purposes. Preparing billing invoices for services rendered or for delivery or shipment of goods.
9. Locating and notifying customer(s) of delinquent accounts by mail (either electronic or otherwise) or telephone to solicit payment. Receiving payment from customers and posting payment to customer accounts. If customer fails to respond, preparing

statements to credit department, initiating repossession proceedings or service disconnection. Keeping records of collection activities and status of accounts.

10. Other activities similar to those specified in paragraphs (7) through (9).

Accounts Payable:

11. Compiling information and records to draw up purchase orders for procurement of materials and services.
12. Making payment to vendors and posting payment to status of accounts.
13. Other activities similar to those specified in paragraphs (11) and (12).

General Administrative:

14. Performing clerical and administrative functions such as drafting correspondence, scheduling appointments, and organizing and maintaining paper and electronic files.
15. Performing data entry through use of a keyboard or scanning device, including verifying data and preparing materials for printing.
16. Using a word processor/computer or typewriter to generate (without substantial modification) letters, reports, forms, or other material from another person's rough draft, corrected copy, or voice recording.
17. Performing duties relating to office management systems and procedures, such as answering telephones, bookkeeping, typing, word processing, office machine operation, and filing.
18. Operating any of the following office machines: photocopying, scanning and facsimile machines.

19. Providing interoffice service/document delivery, including mailroom services, document management, and graphics, video, and website preparation.

20. Other activities similar to those specified in paragraphs (14) through (19).

Corporate and Public Relations:

21. Planning and executing a public relations program or corporate communication policy, including the distribution of internal and external corporate communications, but not to include specific advertising and/or marketing of a product or service.

22. Other activities similar to those specified in paragraph (21).

Meeting Coordination and Travel Planning:

23. Coordinating activities of staff and convention personnel to make arrangements for group meetings and conventions.

24. Negotiating airline, rental car, and hotel contracts.

25. Assisting in travel arrangements, including providing a system for reservations and ticket purchases.

26. Managing motor pool and fleet.

27. Other activities similar to those specified in paragraphs (23) through (26).

Accounting and Auditing:

28. Gathering and reviewing information in accounting records for use in preparing financial statements.

29. Computing, classifying, and recording numerical data to maintain accurate and complete financial records, performing any combination of calculating, posting, and verifying duties to obtain primary financial data for use in maintaining accounting

records, checking the accuracy of figures, calculations, and postings pertaining to business transactions recorded by other workers; and calculating investment performance and net asset values of investments.

30. Consolidating legal entity financial results per country for use in statutory financial statements and tax returns and consolidating worldwide results by business area for use in management accounting.
31. Developing a company-wide accounting manual that prescribes accounting policies and methods to be used and providing related advice.
32. Performing operational and financial internal audits.
33. Preparing government census and related forms required by a service recipient's home country.
34. Preparing reports required by escheat laws required by a service recipient's home country.
35. Completing import/export documentation and arranging for customs payment.
36. Overseeing audits by customs authorities.
37. Other activities similar to those specified in paragraphs (28) through (36).

Tax:

38. Processing tax payments according to prescribed laws and regulations.
39. Gathering information from accounting records and including that information in the preparation of income, property, sales/use, VAT, excise and other tax returns.
40. Overseeing audits conducted by tax authorities.

41. Providing tax advice to businesses to ensure compliance with tax laws, including access to electronic research and tax compliance software.
42. Reviewing local country tax provisions for purposes of inclusion in the consolidated world-wide provision and preparation of the world-wide tax provision.
43. Negotiating advance pricing agreements and other local incentives that benefit the consolidated organization.
44. Other activities similar to those specified in paragraphs (38) through (43).

Health, Safety, Environmental and Regulatory Affairs:

45. Developing company health, safety, and environment standards, monitoring compliance with such standards, and training affected personnel.
46. Gathering information and preparing documentation relating to eligibility for or compliance with laws and regulations governing contracts, licenses and permits.
47. Gathering information, verifying data and preparing documentation relating to compliance with laws and regulations governing financial and securities institutions and financial and real estate transactions. Examining and verifying correctness of, or establishing authenticity of records.
48. Providing security services (e.g., executive protection or global headquarters security).
49. Providing common health risk management systems development, clinical services, industrial hygiene, alcohol and drug testing services (laboratory analyses done by third parties), and advice to business management on health issues.

50. Providing guidance and support operations, integrity management support implementation, coaching, and conducting operations integrity management assessments, development and implementation of safety behavior based programs, and incident reporting and accident investigations.
51. Providing strategies, resources, and training for effective crisis preparedness and response.
52. Other activities similar to those specified in paragraphs (45) through (51).

Budgeting:

53. Compiling data for use by cost estimators in determining cost projections and in preparing budget estimates, including verifying information for completeness, accuracy, and conformance with internal procedures and regulations.
54. Compiling data to prepare budget and accounting reports for management.
55. Other activities similar to those specified in paragraphs (53) and (54).

Treasury Activities:

56. Establishing bank accounts and lock boxes for use by controlled parties, including overdraft facilities and lines of credit.
57. Providing staff and facilities to hedge currency exposures that arise from operations in the normal course of business. This paragraph does not apply to banks (including investment banks), insurance companies, investment companies, similar entities that provide financial services to the public, and investment funds (including hedge and private equity funds).

58. Coordinating investment activities in connection with short-term management of cash generated from operations in the normal course of business. This paragraph does not apply to related-party factoring activities, or to banks (including investment banks), insurance companies, investment companies, similar entities that provide financial services to the public, and investment funds (including hedge and private equity funds).
59. Other activities that are ancillary to the activities specified in paragraphs (56) through (58).

Statistical Assistance:

60. Compiling data for use in statistical studies.
61. Other activities similar to those specified in paragraph (60).

Staffing and Recruiting:

62. Providing staffing support that includes creating job announcements, determining eligibility, evaluating qualifications of candidates, conducting background checks on final candidates, verifying references, developing performance evaluation procedures and forms, and conducting exit interviews for departed employees.
63. Coordinating with temporary employment agencies, applicants, and management throughout the recruiting process.
64. Providing information to applicants regarding open positions, the application and recruiting process, and employment policies.

65. Providing administrative support that includes sourcing and processing resumes, arranging interview schedules for open positions, preparing offer letters, and entering new employee information into the human resource system.
66. Establishing and maintaining employee files relating to payroll, performance and other personnel issues.
67. Assisting with new employee orientations and paperwork.
68. Implementing recruiting plan and locating potential candidates by working with professional search firms, colleges, universities and professional associations. Organizing and attending job fairs and other recruitment events.
69. Developing recruiting and marketing materials and assisting in developing and maintaining content for recruiting website.
70. Analyzing recruiting data and review all job analysis, promotion and placement products.
71. Posting job opening advertisements in appropriate markets through publications, journals and other media.
72. Managing company-wide job postings and employee referral program.
73. Administering a compensation policy, including grading and determining salary ranges for positions.
74. Other activities similar to those specified in paragraphs (62) through (73).

Training and Employee Development:

75. Assisting in training of personnel including assessing development and training needs, creating and conducting internal development and training programs and communicating training opportunities to personnel.
76. Arranging for management training on employment law compliance, employer liability avoidance, interviewing, hiring, terminations, promotions, performance reviews, safety, and sexual harassment.
77. Developing and implementing plans regarding career-development and succession.
78. Developing and implementing a job evaluation process including procedures and forms.
79. Other activities similar to those specified in paragraphs (75) through (78).

Benefits:

80. Developing and implementing employee compensation and benefits including healthcare, life insurance, 401(k), pension, worker's compensation, unemployment, dental, profit sharing, employee incentive compensation, and employee assistance programs.
81. Providing benchmarking studies for compensation and other benefit programs.
82. Providing guidance and direction to employees regarding elections for benefits, applications for benefits and receipt of benefits (including providing assistance to employees in completing all necessary forms).
83. Arranging annual benefit enrollment meetings and employee benefit seminars.

84. Processing employee benefits inquiries and complaints, and reconciling billing issues.
85. Coordinating with hospitals, physicians, insurers, employees, and beneficiaries to facilitate proper and complete utilization of benefits for all employees.
86. Other activities similar to those specified in paragraphs (80) through (85).

Information and Technology (IT) Services:

87. Supporting company-wide computer systems including those used in connection with operations, accounting, manufacturing, customer service, human resources, payroll, and email.
88. Formulating guidelines with respect to the use of IT systems.
89. Maintaining and repairing IT systems.
90. Providing telecommunications facilities.
91. Providing technical assistance and training to users of computer systems and other information technology devices. Answering questions or resolving technical problems relating to computer systems and other information technology devices in person, via telephone or from remote location. Providing assistance concerning the use of computer hardware and software, including printing, installation, word processing, electronic mail, and operating systems, as well as disaster recovery back-up services.
92. Maintaining and testing existing computer databases (including implementing security measures to safeguard computer databases), but not to include analyzing user needs or developing hardware or software solutions (such as systems

integration, website design, writing computer programs, modifying general applications software, or recommending the purchase of commercially available hardware or software).

93. Supporting an organization's existing local area network (LAN), wide area network (WAN), and Internet system or a segment of a network system, regular maintenance of network hardware and software, monitoring network to ensure network availability to all system users and performing necessary maintenance to support network availability, supervising other network support and client server specialists (including implementing network security measures), but not to include analyzing user needs or developing hardware or software solutions (such as systems integration, website design, writing computer programs, modifying general applications software, or recommending commercially available software).
94. Other activities similar to those specified in paragraphs (87) through (93).

Legal Services:

95. General legal services performed on behalf of the taxpayer by in-house legal counsel, including but not limited to, drafting, negotiating and review of contracts or agreements, legal documents, and opinions, representation and advocacy before courts, administrative agencies, arbitrators, legislatures, or other bodies, preparing advice in respect of structuring and reorganization, acquisition, and divestment transactions, and maintaining corporate books and records. Support and administrative functions associated with the above activities (legal research, secretarial, filing and document retrieval, etc.).

96. Other activities similar to those specified in paragraph (95).

Insurance Claims Management:

97. Securing insurance coverage for general, product, and worker's compensation liability, property loss, business interruption, and other business risks.

98. Coordinating with third party insurers, with respect to insurance policies, including preparing claims for submission to such third party insurers.

99. Other activities similar to those specified in paragraphs (97) and (98).

Purchasing:

100. Planning and executing procurement of services and material pursuant to company standard for support functions.

101. Other activities similar to those specified in paragraph (100).

SECTION 4. APPLICATION

The services cost method (SCM) as set forth in Temp. Treas. Reg. § 1.482-9T(b) evaluates whether the price for covered services, as defined, is arm's length by reference to the total services costs with no markup. Two categories of covered services are eligible for the SCM. The first category, specified covered services, is described in Temp. Treas. Reg. § 1.482-9T(b)(i) and is limited to services that are described in this revenue procedure. The second category, low margin covered services, is not described in this revenue procedure.

SECTION 5. EFFECTIVE DATE

This revenue procedure is generally effective for taxable years beginning after December 31, 2007. Taxpayers may elect to apply retroactively the provisions of

Section 1.482-9T of the temporary regulations to certain taxable years. See Temp. Treas. Reg. §1.482-9T(n)(1). In the case of a valid election, this revenue procedure would also apply to the taxable years subject to such an election.

SECTION 6. REQUEST FOR COMMENTS

The Treasury Department and the IRS request further comments from interested persons on the listing contained in this revenue procedure. The revenue procedure is intended to be an evolving list of services that are eligible for the SCM. The Treasury Department and the IRS contemplate issuing updates as appropriate, including a further revision of the revenue procedure to coincide with the end of the one-year transition period and in response to comments received on the temporary regulations. Comments are solicited on the categories and listed activities in the revenue procedure, possible additions, and other revisions. For example, comments are solicited whether warehousing and other functions that support distribution should be eligible for the SCM in light of Temp. Treas. Reg. §1.482-9T(b)(3)(ii)(E)(reselling, distribution ineligible for SCM).

Written comments may be submitted to CC:INTL:Br6 (Rev. Proc. 2007-13), room 4607, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20224. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:INTL:Br6 (Rev. Proc. 2007-13) Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

Alternatively, taxpayers may submit comments electronically via the following e-mail address: Notice.Comments@irs.counsel.treas.gov. Please include "Rev. Proc. 2007-13"

in the subject line of any electronic communications.

SECTION 7. DRAFTING INFORMATION

The principal authors of this revenue procedure are Thomas A. Vidano and Carol B. Tan of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure contact Thomas A. Vidano or Carol B. Tan at (202) 435-5265 (not a toll free call).