Since the limitation under section 481(b)(2) ($3,880) on the amount of tax attributable to the adjustments is applicable, the final tax for the taxable year of the change is computed by adding such amount to the tax for that year computed without the inclusion of any amount attributable to the adjustments, that is, $46,500 plus $3,880, or $50,380.

[T.D. 6500, 25 FR 11732, Nov. 26, 1960, as amended by T.D. 6490, 25 FR 8374, Sept. 1, 1960; T.D. 7301, 39 FR 963, Jan. 4, 1974; T.D. 8608, 60 FR 40078, Aug. 7, 1995]

§ 1.481–3 Adjustments attributable to pre-1954 years where change was not initiated by taxpayer.

If the adjustments required by section 481(a) and § 1.481–1 are attributable to a change in method of accounting which was not initiated by the taxpayer, no portion of any adjustments which is attributable to pre-1954 years shall be taken into account in computing taxable income. For example, if the total adjustments in the case of a change in method of accounting which is not initiated by the taxpayer amount to $10,000, of which $4,000 is attributable to pre-1954 years, only $6,000 of the $10,000 total adjustments is required to be taken into account under section 481 in computing taxable income. The portion of the adjustments which is attributable to pre-1954 years is the net amount of the adjustments which would have been required if the taxpayer had changed his method of accounting in his first taxable year which began after December 31, 1953, and ended after August 16, 1954.

[T.D. 6500, 25 FR 11735, Nov. 26, 1960, as amended by T.D. 8608, 60 FR 40079, Aug. 7, 1995]

§ 1.481–4 Adjustments taken into account with consent.

(a) In addition to the terms and conditions prescribed by the Commissioner under § 1.446–1(e)(3) for effecting a change in method of accounting, including the taxable year or years in which the amount of the adjustments required by section 481(a) is to be taken into account, or the methods of allocation described in section 481(b), a taxpayer may request approval of an alternative method of allocating the amount of the adjustments under section 481. See section 481(c). Requests for approval of an alternative method of allocation shall set forth in detail the facts and circumstances upon which the taxpayer bases its request. Permission will be granted only if the taxpayer and the Commissioner agree to the terms and conditions under which the allocation is to be effected. See § 1.446–1(e) for the rules regarding how to secure the Commissioner's consent to a change in method of accounting.

(b) An agreement to the terms and conditions of a change in method of accounting under § 1.446–1(e)(3), including the taxable year or years prescribed by the Commissioner under that section (or an alternative method described in paragraph (a) of this section) for taking the amount of the adjustments under section 481(a) into account, shall be in writing and shall be signed by the Commissioner and the taxpayer. It shall set forth the items to be adjusted, the amount of the adjustments, the taxable year or years for which the adjustments are to be taken into account, and the amount of the adjustments allocable to each year. The agreement shall be binding on the parties except upon a showing of fraud, malfeasance, or misrepresentation of material fact.

[T.D. 8608, 60 FR 40079, Aug. 7, 1995]

§ 1.481–5 Effective dates.

Sections 1.481–1, 1.481–2, 1.481–3, and 1.481–4 are effective for Consent Agreements signed on or after December 27, 1994. For Consent Agreements signed before December 27, 1994, see §§ 1.481–1, 1.481–2, 1.481–3, 1.481–4, and 1.481–5 (as contained in the 26 CFR part 1 edition revised as of April 1, 1995).

[T.D. 8608, 60 FR 40079, Aug. 7, 1995]

§ 1.482–0 Outline of regulations under 482.

This section contains major captions for §§ 1.482–1 through 1.482–8.

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

(a) In general.
(1) Purpose and scope.
(2) Authority to make allocations.
(3) Taxpayer's use of section 482.
(b) Arm's length standard.
(1) In general.

(2) Arm's length methods.
(i) Methods.
(ii) Selection of category of method applicable to transaction.
(c) Best method rule.
(1) In general.
(2) Determining the best method.
(i) Comparability.
(ii) Data and assumptions.
(A) Completeness and accuracy of data.
(B) Reliability of assumptions.
(C) Sensitivity of results to deficiencies in data and assumptions.
(iii) Confirmation of results by another method.
(d) Comparability.
(1) In general.
(2) Standard of comparability.
(3) Factors for determining comparability.
(i) Functional analysis.
(ii) Contractual terms.
(A) In general.
(B) Identifying contractual terms.
(*1*) Written agreement.
(*2*) No written agreement.
(C) Examples.
(iii) Risk.
(A) In general.
(B) Identification of party that bears risk.
(C) Examples.
(iv) Economic conditions.
(v) Property or services.
(4) Special circumstances.
(i) Market share strategy.
(ii) Different geographic markets.
(A) In general.
(B) Example.
(C) Location savings.
(D) Example.
(iii) Transactions ordinarily not accepted as comparables.
(A) In general.
(B) Examples.
(e) Arm's length range.
(1) In general.
(2) Determination of arm's length range.
(i) Single method.
(ii) Selection of comparables.
(iii) Comparables included in arm's length range.
(A) In general.
(B) Adjustment of range to increase reliability.
(C) Interquartile range.
(3) Adjustment if taxpayer's results are outside arm's length range.
(4) Arm's length range not prerequisite to allocation.
(5) Examples.
(f) Scope of review.
(1) In general.
(i) Intent to evade or avoid tax not a prerequisite.
(ii) Realization of income not a prerequisite.
(A) In general.
(B) Example.
(iii) Nonrecognition provisions may not bar allocation.
(A) In general.
(B) Example.
(iv) Consolidated returns.
(2) Rules relating to determination of true taxable income.
(i) Aggregation of transactions.
(A) In general.
(B) Examples.
(ii) Allocation based on taxpayer's actual transactions.
(A) In general.
(B) Example.
(iii) Multiple year data.
(A) In general.
(B) Circumstances warranting consideration of multiple year data.
(C) Comparable effect over comparable period.
(D) Applications of methods using multiple year averages.
(E) Examples.
(iv) Product lines and statistical techniques.
(v) Allocations apply to results, not methods.
(A) In general.
(B) Example.
(g) Collateral adjustments with respect to allocations under section 482.
(1) In general.
(2) Correlative allocations.
(i) In general.
(ii) Manner of carrying out correlative allocation.
(iii) Events triggering correlative allocation.
(iv) Examples.
(3) Adjustments to conform accounts to reflect section 482 allocations.
(i) In general.
(ii) Example.
(4) Setoffs.
(i) In general.
(ii) Requirements.
(iii) Examples.
(h) Special rules.
(1) Small taxpayer safe harbor. [Reserved]
(2) Effect of foreign legal restrictions.
(i) In general.
(ii) Applicable legal restrictions.
(iii) Requirement for electing the deferred income method of accounting.
(iv) Deferred income method of accounting.
(v) Examples.
(3) Coordination with section 936.
(i) Cost sharing under section 936.
(ii) Use of terms.
(i) Definitions.
(j) Effective dates.

§ 1.482–2 Determination of taxable income in specific situations.

(a) Loans or advances.
(1) Interest on bona fide indebtedness.
(i) In general.

(ii) Application of paragraph (a) of this section.
(A) Interest on bona fide indebtedness.
(B) Alleged indebtedness.
(iii) Period for which interest shall be charged.
(A) General rule.
(B) Exception for certain intercompany transactions in the ordinary course of business.
(C) Exception for trade or business of debtor member located outside the United States.
(D) Exception for regular trade practice of creditor member or others in creditor's industry.
(E) Exception for property purchased for resale in a foreign country.
(*1*) General rule.
(*2*) Interest-free period.
(*3*) Average collection period.
(*4*) Illustration.
(iv) Payment; book entries.
(2) Arm's length interest rate.
(i) In general.
(ii) Funds obtained at situs of borrower.
(iii) Safe haven interest rates for certain loans and advances made after May 8, 1986.
(A) Applicability.
(*1*) General rule.
(*2*) Grandfather rule for existing loans.
(B) Safe haven interest rate based on applicable Federal rate.
(C) Applicable Federal rate.
(D) Lender in business of making loans.
(E) Foreign currency loans.
(3) Coordination with interest adjustments required under certain other Internal Revenue Code sections.
(4) Examples.
(b) Performance of services for another.
(1) General rule.
(2) Benefit test.
(3) Arm's length charge.
(4) Costs or deductions to be taken into account.
(5) Costs and deductions not to be taken into account.
(6) Methods.
(7) Certain services.
(8) Services rendered in connection with the transfer of property.
(c) Use of tangible property.
(1) General rule.
(2) Arm's length charge.
(i) In general.
(ii) Safe haven rental charge.
(iii) Subleases.
(d) Transfer of property.

§ 1.482–3 Methods to determine taxable income in connection with a transfer of tangible property.

(a) In general.
(b) Comparable uncontrolled price method.
(1) In general.
(2) Comparability and reliability considerations.
(i) In general.
(ii) Comparability.
(A) In general.
(B) Adjustments for differences between controlled and uncontrolled transactions.
(iii) Data and assumptions.
(3) Arm's length range.
(4) Examples.
(5) Indirect evidence of comparable uncontrolled transactions.
(i) In general.
(ii) Limitations.
(iii) Examples.
(c) Resale price method.
(1) In general.
(2) Determination of arm's length price.
(i) In general.
(ii) Applicable resale price.
(iii) Appropriate gross profit.
(iv) Arm's length range.
(3) Comparability and reliability considerations.
(i) In general.
(ii) Comparability.
(A) Functional comparability.
(B) Other comparability factors.
(C) Adjustments for differences between controlled and uncontrolled transactions.
(D) Sales agent.
(iii) Data and assumptions.
(A) In general.
(B) Consistency in accounting.
(4) Examples.
(d) Cost plus method.
(1) In general.
(2) Determination of arm's length price.
(i) In general.
(ii) Appropriate gross profit.
(iii) Arm's length range.
(3) Comparability and reliability considerations.
(i) In general.
(ii) Comparability.
(A) Functional comparability.
(B) Other comparability factors.
(C) Adjustments for differences between controlled and uncontrolled transactions.
(D) Purchasing agent.
(iii) Data and assumptions.
(A) In general.
(B) Consistency in accounting.
(4) Examples.
(e) Unspecified methods.
(1) In general.
(2) Example.
(f) Coordination with intangible property rules.

§ 1.482–4 Methods to determine taxable income in connection with a transfer of intangible property.

(a) In general.
(b) Definition of intangible.
(c) Comparable uncontrolled transaction method.

§ 1.482–5 Comparable profits method.

§ 1.482–6 Profit split method.

§ 1.482–7 Sharing of costs.

[T.D. 8552, 59 FR 34988, July 8, 1994, as amended by T.D. 8632, 60 FR 65557, Dec. 20, 1995; 61 FR 7157, Feb. 26, 1996; T.D. 8670, 61 FR 21956, May 13, 1996]

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

(a) *In general*—(1) *Purpose and scope.* The purpose of section 482 is to ensure that taxpayers clearly reflect income attributable to controlled transactions, and to prevent the avoidance of taxes with respect to such transactions. Section 482 places a controlled taxpayer on a tax parity with an uncontrolled taxpayer by determining the true taxable income of the controlled taxpayer. This § 1.482–1 sets forth general principles and guidelines to be followed under section 482. Section 1.482–2 provides rules for the determination of the true taxable income of controlled taxpayers in specific situations, including controlled transactions involving loans or advances, services, and property. Sections 1.482–3 through 1.482–6 elaborate on the rules that apply to controlled transactions involving property. Section 1.482–7T sets forth the cost sharing provisions. Finally, § 1.482–8 provides examples illustrating the application of the best method rule.

(2) *Authority to make allocations.* The district director may make allocations between or among the members of a controlled group if a controlled taxpayer has not reported its true taxable income. In such case, the district director may allocate income, deductions, credits, allowances, basis, or any other item or element affecting taxable income (referred to as allocations). The appropriate allocation may take the form of an increase or decrease in any relevant amount.

(3) *Taxpayer's use of section 482.* If necessary to reflect an arm's length result, a controlled taxpayer may report on a timely filed U.S. income tax return (including extensions) the results of its controlled transactions based upon prices different from those actually charged. Except as provided in this paragraph, section 482 grants no other right to a controlled taxpayer to apply the provisions of section 482 at will or to compel the district director to apply such provisions. Therefore, no untimely or amended returns will be permitted to decrease taxable income based on allocations or other adjustments with respect to controlled transactions. See § 1.6662–6T(a)(2) or successor regulations.

(b) *Arm's length standard*—(1) *In general.* In determining the true taxable income of a controlled taxpayer, the standard to be applied in every case is that of a taxpayer dealing at arm's length with an uncontrolled taxpayer.