

## **SUPPORTING STATEMENT**

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The information required from taxpayers is necessary so that the Service can administer income tax reporting and tax collection under the Internal Revenue Code. The information will also assist taxpayers (individual bankruptcy debtors and their chapter 11 estates) to compute properly their gross income and tax credits.

### 2. USE OF DATA

The information will be used by individual chapter 11 debtors and bankruptcy estates to determine their correct gross incomes when payments are reported to the debtor but taxed to the chapter 11 estate and when W-2 forms are issued to an individual debtor with respect to post-bankruptcy earnings from services.

### 3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

### 4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

### 5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

### 6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

### 7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

We will publish a notice in the Federal Register in the near future to solicit public comments on this notice.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Yearly, approximately 3,000 individuals usually file a bankruptcy petition under chapter 11 of Title 11. Only those individuals and their bankruptcy estates will be burdened by the information this notice collects. The allocation of income between the individual debtor and the bankruptcy estate should not be time-consuming (about 30 minutes per respondent). We estimate total burden hours to be 1,500.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

Not applicable.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

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

19. REASONS FOR EMERGENCY SUBMISSION:

The collection of information in the proposed notice is needed prior to the statutory time periods established under 44 U.S.C. § 3507 because the guidance in the notice is essential for individual chapter 11 debtors and bankruptcy estates to prepare accurate 2005 income tax returns by the due dates. The information required from taxpayers by the notice is necessary so that the Service can administer tax reporting and collection under the Internal Revenue Code. The information will also assist taxpayers in properly reporting gross income for 2005. The Service cannot reasonably comply with the provisions of the Paperwork

Reduction Act regarding normal clearance procedures for the reasons stated below.

(i) Public harm. If the normal clearance procedures are followed harm to the public is likely to result. Individual taxpayers filing chapter 11 bankruptcy petitions after October 16, 2005, have to adjust how they report gross income on their individual income tax returns for 2005 to reflect the amount of their earnings that is includible, not in their gross income, but in the gross income of the bankruptcy estate created when the petition is filed. That adjustment will require the individual and the estate to split between the individual's income tax return and the bankruptcy estate's income tax return the compensation reported on Form W-2 and the gross income reported on other information returns using the individual's name and taxpayer identification number. Without the guidance in the notice as to how to make this allocation, individuals and estates could incur penalties and interest if they fail to make an allocation, or if they allocate incorrectly on their returns for 2005.

(ii) Unanticipated event. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 enacted new section 1115 of the Bankruptcy Code. New section 1115 applies to individuals filing chapter 11 bankruptcy petitions after October 16, 2005 and provides that the income earned by the individual after the petition is filed is the property of the bankruptcy estate. The interaction of new section 1115 of the Bankruptcy Code with section 1398 of the Internal Revenue Code, which directs how individuals and estates are taxed after a chapter 11 petition is filed, results in tax reporting obligations with respect to gross income earned after the petition that are different from the rules in effect for prior years and that are not well-understood by the public.

(iii) Necessary to avoid missed deadlines. Individual chapter 11 debtors and their bankruptcy estates are required to file income tax returns for 2005 by April 15, 2006. The use of normal clearance procedures for the notice would result in guidance on how individuals and bankruptcy estates are to determine their tax liabilities being delayed until after deadlines have passed for filing returns and making estimated tax payments.