

SUPPORTING STATEMENT

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Sections 1441 and 1442 and §1.1441-1(b)(1) generally require a person that makes a payment of an "amount subject to withholding" to a beneficial owner that is a foreign person to deduct and withhold 30 percent of the payment unless it can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a beneficial owner that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding under the Code, regulations, or an income tax treaty.

Section 1.1441-2(a) provides, that the term *amounts subject to withholding* means amounts from sources within the United States that constitute either fixed or determinable annual or periodical income described in §1.1441-2(b) or other amounts subject to withholding described in §1.1441-2(c)

Section 1.1441-2(b)(1) provides that "fixed or determinable annual or periodical income" ("FDAP") includes all income described in section 61 of the Code (e.g., dividends, interest, rents, royalties), unless the item of income is described in §1.1441-2(b)(2). Treas. Reg. §1.1441-2(b)(2) (i) excludes from FDAP, gains derived from the sale of property. Thus, a distribution to a shareholder that is treated as gain from the sale of stock, is excluded from FDAP. Further, to the extent a distribution is a return of capital, it is not gross income under section 61, and thus also is not FDAP.

Section 302 provides rules for determining when a redemption is treated as a distribution in part or full payment in exchange for stock. That section generally requires a comparison of a shareholder's overall interest in the corporation before the distribution and its overall interest in such corporation after the distribution. In conducting the comparison, the constructive ownership rules of section 318 generally apply. If the shareholder's interest in the corporation has been sufficiently reduced, then the distribution is treated as a payment in exchange for the

shareholder's stock. If the shareholder's interest in the corporation has not been sufficiently reduced, the distribution is treated as a distribution under section 301, and will be treated as a dividend to the shareholder to the extent of the corporation's earnings and profits. See section 301(c).

When a publicly held corporation makes a distribution that requires a determination under section 302 whether the distribution is treated as a dividend or a distribution in part or full payment in exchange for stock, the information necessary for each shareholder to make a determination under section 302 generally is not available until after the transaction is completed.

These proposed regulations provide an escrow procedure to be followed by U.S. withholding agents to satisfy the withholding, reporting and deposit requirements of the regulations under sections 1441, 1442, and 1443 with respect to any payment of a corporate distribution to a foreign account holder with respect to stock that is actively traded on an established securities market, that requires a determination under section 302 as to the treatment of the distribution.

2. USE OF DATA

The collection of information is in §1.1441-3(c)(4)(iii) and relates to the requirement that a U.S. withholding agent must deduct and withhold 30 percent of a payment to a beneficial owner that is a foreign person unless the agent can reliably associate the payment with documentation upon which it can rely to establish that the foreign person is entitled to a reduced rate of withholding under the Code or regulations. This information is required to allow a U.S. financial institution that is applying the escrow procedure to properly comply with its withholding and reporting obligations under sections 1441, 1442, and 1443 in the case of a distribution made by a corporation, with respect to actively traded stock, that requires a determination under section 302 whether the distribution is treated as a dividend or a distribution in part or full payment in exchange for stock.

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

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission.

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**

This notice of proposed rulemaking will be published in the Federal Register to provide the public a 60-day period in which to review and provide public comments relating to any aspect of the proposed regulation. A public hearing will be held with respect to this NPRM if any person who has submitted written comments requests one.

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**

Burden estimation:

The collection of information in this proposed regulation is in §1.1441-3(c)(4)(iii). The collection of information relates to the requirement that a corporation making a distribution with respect to its stock, or any intermediary making a payment of such a distribution must withhold on the entire amount unless it has obtained information from each participating shareholder indicating the extent to which a payment represents a sale of stock under section 302.

Section 1.1441-3(c)(4)(iii)(D) sets forth the information that a foreign beneficial owner must provide in the written Section 302 Payment Certification in order to benefit from the Escrow Procedure. It is estimated that approximately 3,500 certifications will be completed annually to provide the information needed to benefit from the Escrow Procedure. It is estimated that it will require approximately 24 minutes to complete a certification. The total reporting burden is estimated to be 1,400 hours.

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**

For new regulations: 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.