

## SUPPORTING STATEMENT

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 848(d)(4)(B) authorizes the issuance of regulations to ensure that the parties to a reinsurance contract treat premiums and other consideration incurred for reinsurance consistently in applying the capitalization requirements of section 848.

Under section 1.848-2(g)(1), a party may not reduce the amounts that it is required to capitalize as specified policy acquisition expenses on account of premiums or other consideration incurred for reinsurance unless it can show that the other party to the reinsurance agreement capitalized the appropriate percentage of the reinsurance premiums received.

The parties to a reinsurance agreement will be presumed to have treated premiums and other consideration for reinsurance consistently and not be subject to this restriction, however, if they make a joint election authorized by section 1.848-2(g)(8) of the regulations. Under the terms of this election, the parties agree that the party with net positive consideration under the reinsurance agreement will capitalize the appropriate percentage of net premiums. The parties also agree to exchange information concerning the net consideration payable under the reinsurance agreement during the taxable year to ensure that this consideration is treated consistently.

The election authorized by section 1.848-2(g)(8) is made by incorporating an election statement in the reinsurance agreement, either as part of the original terms of the agreement or by executing an addendum to the agreement. Section 1.848-2(g)(8) also requires the parties to identify the reinsurance agreement that is the subject of this election on a schedule attached to the parties' federal income tax returns for the first taxable year ending after the election becomes effective.

The election authorized by section 1.848-2(g)(8) should be beneficial to both the Internal Revenue Service and taxpayers because it will ensure that premiums and other consideration for reinsurance are capitalized in a

consistent fashion and will provide the parties to the reinsurance agreement with certainty as to the tax treatment of the items.

The election authorized by section 1.848-2(g)(8) is provided under authority of section 848(d)(4)(B), which authorizes the issuance of regulations to ensure that premiums and other consideration incurred for reinsurance are treated consistently by parties of a reinsurance contract. The election is also issued under authority of section 845(b), which applies to reinsurance agreements having a significant tax avoidance effect.

The election authorized by section 1.848-2(g)(8) is intended to ease the compliance and administrative burden associated with the consistency requirement of section 848(d)(4)(B). The election applies to insurance companies. It is estimated that there are approximately 1,000 reinsurance contracts negotiated between insurance companies each year, and that the vast majority of reinsurance agreements will be structured to take advantage of the election.

The election authorized by section 1.848-2(h)(3), which concerns capitalized foreign reinsurance agreements, is the result of requests made by taxpayers since the notice of proposed rulemaking was published. The regulation interpreted Code Section 848 to bar an insurance company from taking into account net negative amounts from reinsurance agreements with parties not subject to U.S. taxation. Commentators pointed out that this had the effect of doubling the amounts to be capitalized over the life of a reinsurance agreement. In order to accommodate the taxpayers' requests, the new election permits an insurance company to net foreign negative amounts against foreign positive amounts although the regulations still bar the company from netting foreign negative amounts against positive amounts from agreements with United States parties.

The election authorized by section 1.848-2(i)(4) is also the result of requests made by taxpayers during the comment period after the notice of proposed rulemaking was published. Commentators urged that the net negative amount (which potentially reduces tax liability) from one year be carried forward to offset the net positive amounts in later years to diminish the effect of timing mismatches. The final regulations provide the requested relief. Because that relief is of little benefit to an insolvent company that has

little prospect for net positive amounts in future years, the regulations also allow the insolvent company, through an election under section 1.8482(i)(4), to forgo its net negative amount so that the insurance company with which it is engaged in a reinsurance transaction may gain a benefit. The other party must join in the election to facilitate monitoring of these transactions. Each party must attach an election statement to its return for the first taxable year for which the election is effective.

2. USE OF DATA

The information will be used by taxpayers and IRS examination personnel to verify the consistency in the reporting of reinsurance transactions.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The collection of information does not involve the use of automated, electronic, or other technological collection techniques.

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

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

A notice of proposed rulemaking was published in the Federal

Register on November 15, 1991 (56 FR 58003). A public hearing was held on January 31, 1992. The final regulation reflects the comments received, and was published in the Federal Register on December 29, 1992 (57 FR 61813).

In response to the Federal Register Notice dated March 23, 2007 (72. F. R. 13863), we received no comments during the comment period regarding FI-3-91.

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

Section 1.848-2(g)(8) allows parties to a reinsurance contract to make a joint election if they agree that the party with net positive consideration under the agreement will capitalize the appropriate percentage of net premiums. The parties to the reinsurance contract also agree to exchange information concerning the net consideration payable under the agreement during the taxable year to ensure consistency. The parties include an election statement in their agreement and identify the agreement in a schedule attached to their federal income tax returns. There are an estimated 1,000 reinsurance contracts entered into by insurance companies during any calendar year. Taking both parties to the transaction into account, the estimated number of respondents is 2,000. It is estimated that each respondent will spend an average of 1 hour per year to comply with this requirement. Therefore, the total burden imposed on the public will be 2,000 hours.

An insurance company makes the one-time election under section 1.848-2(h)(3) by attaching a statement to the federal income tax return for the taxable year for which the election becomes effective. The election applies to that

year and all subsequent years unless the Commissioner gives the company permission to revoke it. It is estimated that 50 companies will make the election and each will spend an average of 1 hour to report the election. Therefore, the total burden imposed on the public will be 50 hours.

The election authorized by section 1.848-2(i)(4) allows parties in a reinsurance contract to carry net negative amounts over to offset net positive amounts in later years to diminish the effect of timing mismatches. An insolvent company may also elect, under the new section, to forgo its net negative amount so the other party to the reinsurance contract may gain a benefit. It is estimated that not more than 10 insolvent insurers will make the election in any calendar year. Taking both parties to each transaction into account, the estimated number of respondents is 20. It is estimated that each respondent will spend an average of one hour per year to prepare the election statement and comply with this requirement. Therefore, the total burden imposed on the public will be 20 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**

As suggested by OMB, our Federal Register notice dated March 23, 2007, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

**14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

Not applicable.

**15. REASONS FOR CHANGE IN BURDEN**

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

**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 regulation sunsets 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.