

SUPPORTING STATEMENT
(1545-1139)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 1368(e)(3) of the Internal Revenue Code of 1986 allows an S corporation to elect to distribute earnings and profits prior to distributing its accumulated adjustments account for any taxable year. Section 1.1368-1(f)(2) of the regulations sets forth the requirements of the election. The regulations also add a provision under section 1.1368-1(f)(3) whereby an s corporation may elect to distribute earnings and profits before the accumulated adjustments account by utilizing a deemed dividend.

Section 1379(c) of the Code provides that if a corporation was an electing small business corporation for its last taxable year beginning before January 1, 1983, section 1375(d) (as in effect before the enactment of the Subchapter S Revision Act of 1982) shall continue to apply with respect to distributions of undistributed taxable income for any taxable year beginning before January 1, 1983. Section 1.1375-4(c) of the regulations (as in effect before the enactment of the Subchapter S Revision Act of 1982) allows an electing small business corporation to elect to make distributions out of previously taxed income. This regulation has continued validity and is retained in section 1.1368-1(f)(4) of the regulations.

Section 1368 of the Code provides that except to the extent provided in regulations, if the distributions during the taxable year exceed the amount of the accumulated adjustments account ("AAA") at the close of the taxable year, the balance of the AAA shall be allocated among the distributions in proportion to their respective sizes. Section 1.1368-1(g)(2) of the regulations provides a special rule for allocating the AAA where there has been a disposition of substantial amounts of stock in the year of a distribution.

Section 1367 of the Code provides that the basis of each shareholder's stock in an S corporation shall be decreased for any period by the sum of distributions, passthrough

losses and deductions, noncapital, nondeductible expenses, and oil and gas depletion deductions. Section 1.1367-1(e) of the regulations provides an ordering rule whereby non-capital, nondeductible expenses and oil and gas depletion deductions decrease basis first, then losses and deductions, and finally distributions. Section 1.1367-1(f), however, provides a special rule under which a shareholder may choose to decrease basis first for losses and deductions, if the shareholder agrees to carry over to succeeding taxable years any noncapital, nondeductible expenses in excess of basis.

2. USE OF DATA

The reporting requirements are to be performed by shareholders receiving distributions from S corporations and by shareholders disposing of their S corporation stock. The information is necessary in order to insure proper calculation of the tax liability arising from these transactions.

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

A notice of proposed rulemaking was published in the Federal Register on June 9, 1992 (57 FR 24426). The Notice of Proposed Rulemaking was submitted for (and received) OMB approval. A public hearing scheduled for September 14, 1992 was canceled because no one requested to testify. However, we did receive written comments on the proposed regulations. After consideration of the public comments, final regulations were published in the Federal Register on January 3, 1994 (59 FR 12).

In response to the Federal Register notice (73 FR 8405), dated February 13, 2008, we received no comments during the comment period regarding PS-264-82.

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

The burden for the election under 1.1368-1(f)(4) to forego previously taxed income in characterizing distributions is included in the burden of Form 1120S.

Section 1.1368-1(f)(2) allows an S corporation to elect to distribute earnings and profits before the accumulated adjustments account. We estimate that approximately 1,000 S

corporations will make this election and that each election will take .1 hour to complete. Total burden: 100 hours.

Section 1.1368-1(f)(3) allows an S corporation to elect to distribute earnings and profits before the accumulated adjustments account by utilizing a deemed dividend. We estimate that approximately 750 S corporations will make the election and that each election will take .1 hour to complete. Total burden: 75 hours.

Section 1.1368-1(g)(2)(i) allows an S corporation to elect to treat the corporation's taxable year as if it consisted of separate taxable years if there is a qualifying disposition. A qualifying disposition is any disposition of 20 percent or more of the stock of the S corporation in one or more transactions during any thirty-day period during the S corporation's taxable year. We estimate that approximately 250 S corporations will make this election and each election will take .1 hour to complete. Total burden: 25 hours.

Section 1.1367-1(f) allows an S corporation's shareholders to elect to decrease basis for losses and deductions before noncapital, nondeductible expenses if each shareholder agrees to carry over to the succeeding taxable years any noncapital, nondeductible expenses in excess of basis. The burden for the election under 1.1367-1(f) is included in the burden of Form 1040 or Form 1041.

This NPRM will require shareholders of an S corporation with open account debt to maintain records sufficient to verify that the open account debt does not exceed \$10,000 at the close of any day during the S corporation's taxable year. This modifies PS-264-82. The estimated burden per recordkeeper varies from 0.75 hours to 1.25 hours, depending on individual circumstances, with an estimated average of 1 hour. The estimated number of recordkeepers is 250, which brings the total number of responses to 2,250.

The estimated total annual recordkeeping burden is 250 hours, which results in a total of 450 burden hours. Estimates of the annualized cost to respondents for the hour burdens are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated February 13, 2008, 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, during the comment period 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.