

**SUPPORTING STATEMENT  
(Form 8804-C)**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

A partnership with effectively connected taxable income allocable under section 704 to a foreign partner must pay a withholding tax under section 1446 (1446 tax) on that partner's allocable share of ECTI. A partnership pays its section 1446 tax in installments similar to a corporation's payment of its estimated tax. See section 1.1446-3(b). Temporary regulations under section 1.1446-6T provide when a partnership may consider certain deductions and losses of a foreign partner to reduce or eliminate the partnership's obligation to pay withholding tax under section 1446 on effectively connected taxable income allocable under section 704 to such partner. These regulations finalize the temporary regulations.

The foreign partner will use Form 8804-C, "Certificate of Partner-Level Items to Reduce Section 1446 Withholding," to certify to the partnership that either it has partner-level deductions and losses that can reduce the required 1446 tax on its ECTI or that its investment in the partnership is its only activity giving rise to effectively connected income, gain, loss or deduction. The foreign partner will also use Form 8804-C to update information previously certified the partnership for the same taxable year.

Form 8804-C will be a form a foreign partner would voluntarily submit to the partnership if it chooses to provide a certification that could reduce or eliminate the partnership's need to withhold 1446 tax. The partnership also voluntarily chooses whether or not to rely on the form in determining the amount of 1446 tax it withholds. A partnership that relies on the Form 8804-C must submit it to the IRS with Form 8813, "Partnership Withholding Tax Payment Voucher (Section 1446)," for the first installment period on which it relies on the original or any updated Form 8804-C to reduce its payment of 1446 tax. The partnership would also submit Form 8804-C to the IRS when it files the annual Form 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax". The submission of Form 8804-C to the IRS is necessary so that the IRS can determine that the partnership correctly reduced the amount of 1446 tax it

withholds and pays to the IRS.

The information to be provided on Form 8804-C and the requirements to submit the information to the IRS are substantially the same as that required under section 1.1446-6T. Section 1.1446-6T had no particular form for the partner to provide the information. Collection of this information was previously approved by OMB on September 22, 2005, under OMB control number 1545-1934. To ensure uniformity of the certificates and to reduce the likelihood of an inadvertently omitted item causing the certificate to be defective, section 1.1446-6 will provide for the collection of this information be on Form 8804-C.

2. USE OF DATA

The information collected by the IRS will be used for audit and examination purposes and in determining whether credits and/or refunds should be issued.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We have no plans at this time to offer electronic filing because of the low volume compared to the cost of electronic enabling.

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**

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding Form 8804-C.

Treasury Decision 9394 was published in the Federal register (73 FR 23069), on April 29, 2008.

In response to the Federal Register notice (73 FR 29178), dated May 20, 2008, we received no comments during the comment period regarding Form 8804-C or TD 9394.

**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**

List the number of responses, time per response, and total burden for each form included in the submission. The burden estimate is as follows:

<u>Form</u>	<u>Number of Responses</u>	<u>Time per Response</u>	<u>Total Hours</u>
8804-C TD 9394:	1000	10.75 hours	10,750

Section 1.871-10(d)(3) will require a partner that makes an election under section 871(d) or 882(d) of the Internal Revenue Code to treat income from real property located in the United States as effectively connected income to notify the partnership of such election. The submission of this information is mandatory when it applies. We estimate that the reporting burden will affect 200 respondents per year, and take .2 hours for a total of 40 reporting hours.

Section 1.1446-4 defines a nominee as a U.S. person that holds an interest in a publicly traded partnership on behalf of foreign persons. The regulations require a nominee to notify the partnership in a statement attached to the Form W-9 the nominee submits to the partnership that it is a nominee holding interests on behalf of foreign partners. The submission of this information is voluntary. We estimate that this requirement will affect 75 respondents per year, and take .2 hours each for a total of 15 reporting hours.

Section 1.1446-3 requires a foreign trust or estate that is a partner in a partnership subject to section 1446 to issue a statement to its beneficiaries informing them of the amount of the credit under section 33 that the beneficiary is entitled to take for 1446 tax paid by the partnership. We estimate that this requirement will affect 300 respondents per year, and take .5 hour each for a total of 150 reporting hours.

Section 1.1446-3 requires a partnership making installment payments of 1446 tax to notify each of its foreign partners of the portion of each installment payment made on the partner's behalf. No particular form is required for the partnership's notification to its foreign partners. The burden associated with this provision is mandatory. We estimate that this requirement will affect 17,775 respondents per year, and take .4 hour each for a total of 7,805 reporting hours.

Thus, the total burden is 7,805 hours.

**Composite total:**

<b>Estimated Responses:</b>	<b>17,775</b>
<b>Estimated Burden:</b>	<b>18,168 hours.</b>

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 May

20, 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 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

The primary cost to the government consists of the cost of printing Form 8804-C. We estimate that the cost of printing the form is \$ 2,500.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

See attachment.

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.

