

**SUPPORTING STATEMENT  
(REG-251701-96)**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Section 1302 of the Small Business Job Protection Act of 1996 (the Act) amended §1361 of the Internal Revenue Code (the Code) to permit an Electing Small Business Trust (ESBT) to be a shareholder of an S corporation. Section 1361(e)(3) of the Code provides that an election under §1361(e) shall be made by the trustee. Neither the statute nor the legislative history provides any guidance as to the time or manner for making the ESBT election. This regulation specifies the procedures necessary for a trustee to elect ESBT status.

**2. USE OF DATA**

The information will be used by the IRS for tax administration purposes.

**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 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

Notice 97-12 was published in the Internal Revenue Bulletin (1997-3 I.R.B. 11) on January 21, 1997. After considering the public comments, the final regulation (REG-209798-95) was published in the Federal Register on December 31, 1997 (62 FR 68173).

In response to the Federal Register Notice dated May 8, 2008 (73 FR 26188), we received no comments during the comment period regarding REG-209798-95.

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 section headed ESBT Election requires the trustee to sign and file a statement with the service center with which the S corporation files its income tax return. We estimate that 7,500 trustees will sign and file this statement. It will take 1 hour to prepare this statement. The total burden for this requirement is 7,500 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 May 8, 2008 (73 FR 26188), 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.