

SUPPORTING STATEMENT

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The Heroes Earnings Assistance and Relief Tax Act of 2008 enacted section 877A which addresses the tax responsibilities of expatriation. Section 877A(a) deems certain expatriating taxpayers to have sold all of their property for fair market value on the day before they expatriate, and requires such gain to be reported on the taxpayer's final Form 1040. Section 877A(b) allows the taxpayer to make an election to defer the recognition of gain in the deemed year of sale, provided that adequate security is provided and accepted by the Service.

This Notice proposes guidelines for taxpayers to comply with the tax responsibilities of expatriation related to determining the amount of tax owed as well as a mechanism to defer that tax until an actual sale of the property occurs.

2. USE OF DATA

The Service will use the information for audit purposes to determine whether taxpayers appropriately elected to defer tax and to allow the future collection of tax when the asset is actually disposed of.

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

We will publish a notice in the Federal Register in the near future to solicit public comments on this (notice, revenue procedure, or announcement).

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 first collection of information requirement in this Notice is in section ___ of the Notice, as required by 877A(a)(1). The collection of information relates to the requirement that the taxpayer obtain the fair market value appraisal of his or her property and report such value to the Service. This collection of information is necessary for the proper performance of the function of the Service because it notifies the Service that a tax has already been paid on such property and thus allows for a step up in basis to the taxpayer preventing double taxation on the same property when the actual sale of the property occurs.

A statement must be attached to the final Form 1040 filed by the expatriating taxpayer setting forth the fair market value of all assets the taxpayer owns along with the basis of such assets. We estimate that annually approximately 100 taxpayers will expatriate who will be subject to

877A, and that it will take approximately 4 hours to prepare the documentation. The total reporting burden is estimated to be 400 hours.

Additionally, the second collection requirement in the Notice is in section ___ of the Notice, as required by 877A(b)(4)(B). This collection of information is necessary for the proper performance of the function of the Service because it notifies the Service that the taxpayer is electing to defer a tax that is owed and allows for insuring that the tax owed is eventually paid.

A bond, letter of credit, or adequate security statement must be furnished to the appropriate SBSE Advisory Office by the expatriating taxpayer for each item the taxpayer wishes to defer the tax. We estimate that annually approximately 10 taxpayers will elect to defer the payment of tax, and that it will take approximately 2 hours to prepare the documentation. The total reporting burden is estimated to 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

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 a new notice: 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.

Note: This is an emergency submission. The Notice provides guidance for section 877A enacted on June 17, 2008, under the Heroes Earnings Assistance and Relief Tax Act of 2008. Given the very recent date of enactment of the legislation, IRS Counsel and Treasury are working in an expedited manner to provide guidance to taxpayers in order to comply with the legislation. The law is currently in effect, but there is no guidance for individuals expatriating after June 16, 2008 and there is much uncertainty about how to effectively expatriate and comply with the law.

If a taxpayer wishes to expatriate but cannot pay the required mark to market tax imposed under section 877(a) for the year of expatriation, section 877(b) allows for a deferral of tax by providing adequate security, such as a bond or letter of credit. However, there currently is no mechanism in place for the taxpayer to obtain the bond or letter of credit, and thus, the tax deferral mechanism cannot be used. This would mean that the taxpayer would have to pay the mark to market tax for the year of expatriation.

The Service believes that the interest of both taxpayers and the Service would be best served if guidance on section 877A is published as soon as possible, and therefore, an emergency submission is requested.