

SUPPORTING STATEMENT
(REG-106876-00)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Under section 897, a foreign transferor of a U.S. real property interest (USRPI) is generally taxed on gain from the disposition of the USRPI as if the taxpayer were engaged in a U.S. trade or business and as if such gain were effectively connected with a trade or business under section 871 or 882 (ECI). As a means to ensure the collection of the tax, the transferee of the USRPI generally has a withholding tax obligation under section 1445, which is generally 10 percent of the gross amount paid over to the transferor.

Withholding under section 1445 can be reduced or eliminated pursuant to various nonrecognition provisions (e.g., certain reorganizations under section 368(a)), treaty provisions, the tax-exempt status of the foreign transferor, or in situations where the transferor's maximum tax liability under section 897 is less than the withholding tax. To reduce or eliminate the amount withheld under section 1445, either the transferor or transferee (acting as the withholding agent) may request a withholding certificate from the IRS citing the grounds for the reduction or elimination of withholding and including any supporting documentation or other evidence substantiating the request.

The withholding certificate provisions of Treas. Reg. §1.1445-3 have been amended to provide specific guidance on obtaining withholding certificates in the case of nonrecognition exchanges under section 1031 and exclusions from income under section 121. Under section 121(a), gross income does not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more. Section 1031(a) provides for the nonrecognition of gain or loss on the exchange of like-kind property which is held for productive use in a trade or business or held for investment.

2. USE OF DATA

Taxpayers request withholding certificates from the IRS to reduce or eliminate the amount of withholding tax under section 1445. A withholding certificate that is issued by the IRS prior to the disposition of the USRPI serves to notify the withholding agent that no

withholding or reduced withholding is required. If an application for a withholding certificate is submitted before or on the date of the transfer (so it is considered to be pending with the Service at the time of transfer), the withholding agent is not required to file a withholding tax return and pay over the withholding tax until 20 days after the date the IRS mails the withholding certificate or notice of denial. See §1.1445-1(c)(2)(A).

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

A notice of proposed rulemaking was published in the Federal Register on July 26, 2002 (67 FR 48823). No public hearing was requested or held. Written comments responding to the notice of proposed rulemaking were received. The final regulations were published in the Federal Register on August 5, 2003 (68 FR 46081) with minor revisions based on comments received.

We received no comments during the comment period in response to the

Federal Register notice dated July 22, 2008 (73 FR 42657).

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 26USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collections of information required in this notice of proposed rule-making are in Treas. Reg. §§1.1445-2(d)(2) and 1.1445-3.

Under §1.1445-2(d)(2), a transferee is not required to withhold tax on a disposition of a U.S. real property interest if the transferor notifies the transferee that the transferor is not required to recognize any gain or loss with respect to the transfer because of the operation of a nonrecognition provision of the Internal Revenue Code. The transferee must provide a copy of the notice of nonrecognition to the IRS within 20 days of the transfer. The IRS receives on average 50 notices of nonrecognition under §1.1445-2(d)(2). The estimated average annual burden per applicant to report these types of transactions is 2 hours, and the total annual reporting burden is 100 hours (50 X 2).

Under §1.1445-3, the withholding tax may be reduced or eliminated pursuant to a withholding certificate issued by the IRS. If the withholding certificate is issued by the IRS prior to the disposition of the USRPI, it serves to notify the withholding agent that no withholding or reduced withholding is required. If an application for a withholding certificate is pending with the Service at the time of transfer, the withholding agent is not required to file a withholding tax return and pay over the withholding tax until 20 days after the date the IRS mails the withholding certificate or notice of denial.

The IRS receives on average 4,300 withholding certificate applications

(Form 8288-B) annually. The withholding certificates dealing with nonrecognition exchanges under section 1031 and exclusions from income under section 121 constitute a small percentage of the total withholding certificates applied for in a year. Therefore, we estimate the number of withholding certificates addressed by this notice of proposed rule-making to be approximately 100. The estimated average annual burden per applicant to report these types of transactions is 5 hours, and the total annual reporting burden is 500 hours (100 X 5).

The total burden is 600 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 July 22, 2008 (73 FR 42657), requested public comments on estimates of cost of 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 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.