

Supporting Statement
(REG-106010-98)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 110(a) provides, in general, that gross income of a lessee does not include any amount received in cash (or treated as a rent reduction) by a lessee from a lessor under a short-term lease of retail space for the purpose of such lessee's constructing or improving qualified long-term real property for use in such lessee's trade or business at such retail space, but only to the extent that such amount does not exceed the amount expended by the lessee for such construction or improvement.

Section 110(c)(1) defines the term "qualified long-term real property" as nonresidential real property which is part of, or otherwise present at, the retail space referred to in section 110(a) and which reverts to the lessor at the termination of the lease. Section 110(c)(2) defines the term "short-term lease" as a lease (or other agreement for occupancy or use) of retail space for 15 years or less (as determined under the rules of section 168(i)(3)). Section 110(c)(3) defines the term "retail space" as real property leased, occupied, or otherwise used by a lessee in its trade or business of selling tangible personal property or services to the general public.

Section 110(d) provides that, under regulations, the lessee and lessor described in section 110(a) must, at such times and in such manner as may be provided in such regulations, furnish to the Secretary information concerning the amounts received (or treated as a rent reduction) and expended as described in section 110(a), and any other information which the Secretary deems necessary to carry out the provisions of section 110.

Section 110 applies to leases entered into after August 5, 1997. Regulation section 1.110-1(c) prescribes the information required to be furnished by the lessor and the lessee and the time and manner for providing that information to the IRS.

2. USE OF DATA

The information under §1.110-1(c) is required by the IRS so that a taxpayer receiving a construction allowance as lessee from the lessor may establish the amount qualifying for the safe harbor under section 110(a).

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We have no plans to offer electronic filing. 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

We have been unable to reduce the burden for small businesses.

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 September 30, 1999 (64 FR 50783). A public hearing was held on January 19, 2000. The final regulation was published in the **Federal Register** on September 5, 2000 (65 FR 53584).

We received no comments during the comment period in response to the **Federal Register** notice dated August 13, 2008 (75 FR 47252).

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 U.S.C. 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.110-1(c) was added so that a taxpayer receiving a construction allowance as lessee from the lessor may establish the amount qualifying for the safe harbor under section 110(a). Section 1.110-1(c)(2) requires that the lessee and the lessor furnish information to the IRS by attaching a statement with the information to the lessor's or the lessee's Federal income tax return. The statement must be filed no later than the date prescribed by law for filing the return (including any extensions of time) for the taxable year in which the construction allowance was paid by the lessor or received by the lessee. We estimate that 10,000 taxpayers will take from .5 to 1.5 hours to comply with this requirement, with an estimated average of 1 hour per taxpayer. The total burden for this new reporting requirement is estimated to be 10,000 hours.

Estimates of the annualized cost to respondents for the hour burdens associated with the information collection are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register** notice dated August 13, 2008 (75 FR 47252), 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 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.