

Memorandum

Date: October 31, 2008

To: OMB Unit

From: Emile R. Beausejour

Subject: Emergency Justification Statement for Form 8926, Disqualified Corporate Interest Expense Disallowed Under Section 163(j) and Related Information

Congress directed the Treasury in sections 424 and 806 of Public Law (P.L.) 108-357, the American Jobs Creation Act of 2004, to study issues surrounding earnings stripping issues corporations use under section 163(j), *Limitation on deduction for interest on certain indebtedness*. The Treasury subsequently found in November 2007, in the Report to Congress on Earnings Stripping, Transfer Pricing and U.S. Income Tax Treaties ("the report"), that the most egregious situation arises when a U.S. corporation converts to foreign corporation status.

Thus, the Office of Tax Policy informed Chief Counsel to develop a new form to identify and capture information concerning the use of section 163(j) by corporations. Chief Counsel contacted Business Forms and Publications section of Tax Forms and Publications in early August 2007 to develop the form for tax year 2008.

The report noted the creation of the Form 8926 is needed to obtain additional information to aid the further administration of Code section 163(j). The report notes the inability to quantify with accuracy the extent of earnings stripping although studies have presented strong evidence of significant earnings stripping. Thus, the Form 8926 will aid in this issue. We are estimating 500,000 corporate filers. However, lacking any previous tracking, it is only an estimate.

On December 10, 2007, Announcement 2007-114, *Disqualified Corporate Interest Expense Disallowed Under Section 163(j) and Related Information*, was issued notifying the public of the development of the Form 8926.

Since then, we have been working closely with Associate Chief Counsel (International) in the development of the form. The information required to be captured on the form itself was put into a final draft this week. The instructions are in the final stages at this moment.

An earlier request to OMB for Paperwork Reduction Act submission on the form and its instructions would have yielded incorrect results.

As the form and instructions are needed for 2008 corporate tax returns, waiting the full 150 days for the process would yield a March 2009 availability date. This could hamper corporations from filing a timely tax return as the due date of calendar year corporations is March 16, 2009.

A late availability of the form would not allow the taxpayer corporations to timely understand the new form and instructions. This would then place undue burden on both the taxpayer and the Service as extensions would have to be prepared by the corporations and the Service would have to process them. Alternatively, the taxpayer corporation would file their return on time and then have to file an amended return at a later date. This would also add undue taxpayer burden and burden the Service with additional processing costs for the second return.

Thus, we are requesting an emergency Paperwork Reduction Act review by December 1, 2008.