

SUPPORTING STATEMENT
(REG-209827-96 and REG-111672-99)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 367(e)(1) provides that a domestic corporation will recognize gain on section 355 distributions of stock or securities to foreign persons, to the extent provided in regulations. Section 367(e)(2) provides that sections 337(a) and (b)(1) will not apply to a domestic corporation's section 332 distributions to a foreign parent corporation that owns 80 percent of the domestic liquidating corporation as described in section 337(c). Section 6038B(a) requires a U.S. person who transfers property to a foreign corporation in an exchange described in sections 332 and 355 to furnish the Secretary of the Treasury with information with respect to the transfer, to the extent and manner provided in regulations.

The final regulations under section 367(e)(1) require gain recognition only for distributions of the stock or securities of foreign corporations to foreign persons. The final regulations under section 367(e)(2) generally require gain recognition when a domestic corporation liquidates into its foreign parent corporation and do not require gain recognition when a foreign corporation liquidates into its foreign parent corporation. The final regulations under section 367(e)(2) provide exceptions to general rules. The temporary regulations under section 6038B require a domestic corporation making a distribution of the stock or securities of a foreign corporation to a foreign person or a distribution in liquidation to a foreign parent to file with the Internal Revenue Service a Form 926 and describe thereon the property transfer subject to this section.

2. USE OF DATA

The data collected under section 367(e)(1) will be used by the Internal Revenue Service to determine whether a taxpayer has correctly calculated its tax liability under section 367(e)(1). The data collected under section 367(e)(2) will be used by the Internal Revenue Service to determine whether a taxpayer is properly claiming an exemption from taxation. The information collected by under section 6038B will be used by the Internal Revenue Service to identify assets that have been transferred outside the U.S. taxing jurisdiction.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

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

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

On January 16, 1990, temporary regulations under section 367(e)(1) and 367(e)(2) were published in the **Federal Register** (55 FR 1406 [TD 8280, 1990-1 C.B. 80]). A cross-referenced Notice of Proposed Rulemaking was published on that same date (55 FR 1472 [1990-1 C.B. 678]). On January 25, 1993, final regulations under section 367(e)(1) were published in the **Federal Register** (58 FR 5927 [TD 8472, 1993-1 C.B. 51]). The final regulations under section 367(e)(1) were removed and replaced with temporary regulations that were published in the **Federal Register** on August 14, 1996 (61 FR 42165 [TD 8682, 1996-2 C.B. 12]). A cross-referenced Notice of Proposed Rulemaking was published on August 14, 1996 (61 FR 42217).

Comments were received with respect to the 1990 Notice of Proposed Rulemaking concerning sections 367(e)(1) and 367(e)(2). No significant comments were received with respect to the 1996 Notice of Proposed Rulemaking concerning section 367(e)(1). No hearings were held on either Notice of Proposed Rulemaking.

Commentators to the 1990 Notice of Proposed Rulemaking suggested that distributions of the stock or securities of domestic corporations should not be subject to gain recognition under section 367(e)(1). Although the 1993 final regulations under section 367(e)(1) and the 1996 temporary regulations under section 367(e)(1) did not adopt this comment, the 1999 final regulations under section 367(e)(1) adopt the comment and do not require gain recognition when a domestic corporation makes a section 355 distribution of stock or securities of another domestic corporation to foreign persons.

Neither of the Notices of Proposed Rulemaking included any information collection burden associated with section 6038B.

The final regulations under sections 367(e)(1) and 367(e)(2) and the amendments to the temporary regulations under section 6038B were published with paperwork requirements in the Federal Register on August 9, 1999(65 FR 43072).

We received no comments during the comment period in response to the **Federal Register** notice dated September 24, 2008 (73 FR 55214).

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

Section 1.367(e)-1(d)(2) requires non-publicly traded domestic corporations making section 355 distributions of the stock or securities of a foreign corporation to identify distributees who are U.S. persons and certify the amount of stock or securities distributed to the U.S. persons. We estimate that this requirement will affect 15 respondents per year and take 4 hours each, for a total of 60 hours.

Section 1.367(e)-1(d)(3) requires publicly traded domestic corporations making section 355 distributions of the stock or securities of a foreign corporation to provide a statistical analysis (conducted by an unrelated party) to infer an amount of stock or securities that were distributed to distributees who are U.S. persons, in order to rebut a presumption that all such stock or securities were distributed to foreign persons. We estimate that this requirement will affect 2 respondents per year and take 20 hours each, for a total of 40 hours. Section 1.367(e)-2(b)(2) contains various collection and reporting requirements in order for domestic corporations to qualify for nonrecognition of gain attributable to property distributed to a foreign parent corporation in a complete liquidation of the domestic corporation. Section 1.367(e)-2(c)(2)(B) and (C) contain various collection and reporting requirements in order for foreign subsidiary corporations to qualify for nonrecognition of gain attributable to the distribution of property used in a U.S. trade or business to a foreign parent corporation in a complete liquidation of the foreign subsidiary corporation. We estimate that the requirements contained in §§ 1.367(e)-2(b)(2) and 1.367(e)-2(c)(2)(B) and (C) will affect 200 respondents per year and take 8 hours each, for a total of 1,600 hours.

Section 1.6038B-1(e)(3) requires a domestic corporation making a section 355 distribution of stock or securities of a foreign corporation to foreign persons to file a Form 926 with an added addendum describing the distributions to foreign persons. We estimate that the requirements contained in § 1.6038B-1(e)(3) will affect 17 respondents per year and take 3 hours each, for a total of 51 hours.

Section 1.6038B-1(e)(4) requires domestic corporations making distributions of property to a foreign parent corporation in complete liquidation of the domestic corporation to file a Form 926 and identify thereon the property distributed to the foreign parent corporation. We estimate that the requirements contained in § 1.6038B-1(e)(4) will affect 180 respondents per year and take 4 hours each, for a total of 720 hours.

Thus, the total burden under OMB #1545-1487 (REG-209827-96 and REG-111672-99) is 2,471 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 September 24, 2008 (73 FR 55214), 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.