

SUPPORTING STATEMENT
(REG-129243-07/IA-38-90)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This final regulation implement the amendments to tax return preparer penalties under sections 6060, 6107, and 6694 of the Internal Revenue Code (Code) enacted by section 8246 of the Small Business and Work Opportunity Tax Act of 2007 and section 506 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008.

2. USE OF DATA

This information is necessary to require recording of the name, taxpayer identification number, and principal place of work of each employed tax return preparer consistent with Code section 6060, require each return or claim for refund prepared available for inspection by the Commissioner of Internal Revenue or his delegate consistent with Code section 6107, and to document that the tax return preparer advised the taxpayer of the penalty standards applicable to the taxpayer in order for the tax return preparer to avoid penalties under Code section 6694.

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 whenever 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 on June 17, 2008, which afforded the public a 60 day period in which to review and provide public comments relating to any aspect of the proposed regulations. A public hearing was held on August 18, 2008, with respect to the notice of proposed rulemaking. The final regulations were published in the Federal Register on December 22, 2008.

In response to the **Federal Register Notice** dated **October 7, 2008 (73 FR 58713)**, we received no comments during the comment period regarding Regulation 129243-07.

9. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The IRS estimates that the total number of respondents is 684,268, based on an estimate that the number of compensated tax return preparers is 684,268. This number is based on the number IRS enrolled agents, an estimate of the number of unenrolled return preparers from GAO study, Paid Tax Return Preparers, GAO-06-563T (April 4, 2006) and an estimate of the number of tax return preparer firms based on data from the Bureau of Labor Statistics, Office of Occupational Statistics and Employment Projections.

The IRS estimates the total number of annual responses as 127,801,426, based on an estimate that 127,761 tax returns is filed by return preparers, 38,566 employee reports will be prepared, and 1660 situations advising the standards of care will be documented. These estimates are based on a total number of 228,145,000 returns filed and an estimate that 127,761,200 tax returns are prepared by compensated tax return preparers based on an estimate that 56% of returns are prepared by tax return preparers from a GAO study, Paid Tax Return Preparers, GAO-06-563T (April 4, 2006). The revisions to Treas. Reg. § 1.6107 would require that all tax return preparers retain a complete copy of each return or claim for refund prepared or a list of the name, taxpayer ID number and taxable year for each return and the name of the preparer required to sign the return or claim for

refund.

The IRS estimates that the total amount of annual responses includes 38,566 employee reports based on an estimate that the percentage of preparers employed by others is 59.7% based data from the Bureau of Labor Statistics, Office of Occupational Statistics and Employment Projections, and an estimate that each tax return preparer firm employs 10 return preparers. The proposed revisions to Treas. Reg. § 1.6060-1 would require persons who employ all tax return preparers to retain a record of the name, taxpayer ID number and principal place of work of each return preparer employed.

The IRS estimates that the total amount of annual responses includes 1660 situations in which a tax return preparer would document the advising of standards of care applying to taxpayers to avoid penalties rather than prepare Forms 8275, Disclosure Statement, and Forms 8275-R, Regulation Disclosure Statement. This estimate is based on the number of Forms 8275 and 8275-R filed electronically which is used to estimate 3320 as the total number of Forms 8275 and 8275-R that will be filed in 2008, and the estimate that in one out of three cases a tax return preparer would document the advising of standards of care rather than prepare and file Forms 8275 and Forms 8275-R. The revisions to Treas. Reg. § 1.6694-2(c)(3) allow the tax return preparer to generally avoid imposition of the tax return preparer penalties under section 6694 in cases when a tax return position meets the “substantial authority” standard but not the “reasonable belief that the position would more likely than not be sustained” standard if the tax return preparer advises the taxpayer of the penalty standards applicable to the taxpayer, and contemporaneously documents in the tax return preparer’s files that this information or advice was provided.

The IRS estimates the total annual reporting burden is 10,679,320 hours, based on the estimate that it would take 10,646,767 hours to copy or prepare a list of returns prepared, 32,138 hours to prepare and retain a list of return preparers, and 415 hours to document preparers advising taxpayers of standards of care in lieu of preparing Forms 8275 and 8275-R. These estimates is based on an estimate that it would take 5 minutes or 1/12 of an hour per 127,761,200 returns prepared by compensated tax return preparers for a total of 10,646,767 hours to copy or prepare the list proposed to be required by Treas. Reg. § 1.6107.

The IRS estimates that the total annual reporting burden includes 32,138 hours based on an estimate that it would take 5 minutes or 1/12 of an hour per each of the estimated 10 employees in 38,566 estimated return preparer firms required to retain a record of each return preparer proposed to be required by Prop. Treas. Reg. 1.6060-1.

The IRS estimates that the total annual reporting burden includes 415 hours based on an estimate that it would take 15 minutes or ¼ of an hour to document each of the 1660 situations in which a tax return preparer would document the advising of standards of care applying to taxpayers to avoid penalties rather than prepare Forms 8275, Disclosure Statement, and Forms 8275-R, Regulation Disclosure Statement proposed to be required by Prop. Treas. Reg. § 1.6694-2(c)(3).

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register Notice** dated **October 7, 2008 (73 FR 58713)**, 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 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 these cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

Due to the final regulation which implemented the amendments to tax return preparer penalties under sections 6060, 6107, and 6694 of the Internal Revenue Code (Code) enacted by section 8246 of the Small Business and Work Opportunity Tax Act of 2007 and section 506 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, the burden hours were increased to 10,679,320.

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.