

**SUPPORTING STATEMENT
(REG-248770-96)**

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

In general, under section 7430 a prevailing party may recover the reasonable administrative or litigation costs incurred in an administrative or civil proceeding if the proceeding relates to the determination, collection, or refund of any tax, interest, or penalty. Section 302.7430-2(c)(1) of the regulations provides that the IRS will not award administrative costs under section 7430 unless the taxpayer files a written request to recover reasonable administrative costs in accordance with the provisions of the regulations. One of those provisions is contained in §301.7430-2(x)(c)(i)(B).

2. USE OF DATA

The information will be used by the IRS personnel responsible for granting or denying a request for administrative costs.

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**

The notice of proposed rulemaking was published in the Federal Register on January 2, 1997 (62 FR 77). No public hearing was requested or held. The final regulations were published in the Federal Register on July 22, 1997 (62 FR 39115).

In response to the **Federal Register Notice** dated **October 30, 2008 (73 FR 64663)**, we received no comments during the comment period regarding Regulation 248770-96.

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 301.7430-2(c)(3)(i)(B) requires a statement of the reasons why the taxpayer alleges that the position of the IRS in the administrative proceeding was not substantially justified. We estimate that 38 taxpayers will be affected annually by this reporting requirement. It is estimated that it will take approximately 2 hours to complete the statement. According, the estimated annual reporting burden is 76 hours.

Section 1.7430-2(c)(3)(i)(B) also provides that for administrative proceedings commenced after July 30, 1996, if

the taxpayer alleges that the IRS did not follow any applicable published guidance, the statement must identify all application published guidance that the taxpayer alleges the IRS did not follow. We estimate that 38 taxpayers will be affected by this reporting requirement. It is estimated it will take approximately 15 minutes to identify the applicable published guidance that the taxpayer alleges the IRS did not follow. Accordingly, the estimated reporting burden is 10 hours.

The estimated total annual reporting burden is 86 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 **October 30, 2008 (73 FR 64663)**, 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.