

**SUPPORTING STATEMENT  
REG-209709-94**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Under section 197(f)(9), certain qualifying taxpayers may avoid the application of anti-churning rules of section 197 for transactions between related parties. To avoid the anti-churning rules, the person from whom the taxpayer acquired the intangible property must elect to recognize the gain and to pay a tax on such gain. The regulations provide that the person so electing notify both the Internal Revenue Service and the taxpayer of its election, and provide the Internal Revenue Service with sufficient information to confirm the amount of tax due.

**2. USE OF DATA**

The Service will use the information described under 1, above to verify that taxpayers have complied with Code section 197.

**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 (62 FR 2336) was published January 16, 1997, which did not have the paperwork requirement. Public comment was solicited by the NPRM and a public hearing was held on May 15, 1997. No comments were received on the election to recognize gain provision. The final regulation (65 FR 3821) was published in the Federal Register on January 25, 2000, which includes the paperwork requirement.

In response to the **Federal Register Notice** dated **December 22, 2008 (73 FR 78426)**, we received no comments during the comment period regarding REG-209709-94.

**9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

**10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and return information are confidential as required by 26 U.S.C. 6103.

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

**12. ESTIMATED BURDEN ON INFORMATION COLLECTION**

Section 1.197-2(h)(9) requires the party making the election to attach a copy of the election statement to a timely filed Federal income tax return for the taxable year that the election under section 197(f)(9)(B) is effective and to provide written notification of the election to the party acquiring the section 197 intangible. We estimate that no more than 500 taxpayers per year will be affected by this requirement and that they will take about 3 hours to prepare the election statement and provide the required notification. Accordingly, the estimated reporting burden is 1,500 hours.

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

**13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

As suggested by OMB, our **Federal Register Notice** dated **December 22, 2008 (73 FR 78426)**, 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 regulations sunset as of the expiration date. Taxpayers are not likely to be sure 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 83-1**

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.