

SUPPORTING STATEMENT (FI-182-78)

25256. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 1058 of the Internal Revenue Code provides that if a taxpayer transfers securities pursuant to a securities lending agreement containing the provisions required under section 1058, the taxpayer will not recognize gain or loss on the exchange of the securities for the agreement or on the return of identical securities in satisfaction of the agreement. Section 1058 provides that the agreement must require the borrower to return to the lender securities identical to those lent, must require the borrower to pay to the lender amounts equivalent to interest, dividends, and other distributions to which the owner of the securities is entitled, must not reduce the risk of loss or opportunity for gain on the securities, and must satisfy any other requirements that the Commissioner prescribes by regulation. The regulations require the agreement to satisfy the terms of section 1058, and, in addition, require the agreement to be in writing. This agreement is required by section 1058 to entitle the lender not to recognize gain or loss on the exchange. If any requirement is not satisfied, the taxpayer will recognize either gain or loss, whichever is appropriate, upon the exchange, unless another section of the Code provides for nonrecognition. The written agreement is not filed with the Internal Revenue Service. However, the written agreement is evidence of the existence of the agreement and is used by the taxpayer, in a tax audit situation, to justify nonrecognition treatment of gain or loss upon the exchange of the securities.

These securities lending agreements are common practice in the securities market. The requirements listed in section 1058 and the regulations are the same as those that appear in the lending agreements now used in the securities market. Therefore, section 1058 does not require taxpayers to do anything different, for income tax purposes, than taxpayers do in the securities market. Section 1058 merely codifies and allows favorable tax treatment to activities and procedures of the private sector, the securities market.

25257. USE OF DATA

The information provided in the written securities lending agreement is used as evidence to support the existence of the agreement. Therefore, presentation of the agreement to the Internal Revenue Service is necessary only to justify nonrecognition of gain or loss, from

the exchange of the securities for the agreement, in a tax audit situation. If the agreement is not written or if any of the required information is missing or not complied with, the taxpayer will recognize gain or loss, whichever is appropriate, upon the exchange. The Securities and Exchange Commission requires security lending agreements whenever securities are lent.

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

A notice of proposed rulemaking was published on July 26, 1983 (48 FR 33912). At that time the general public was given a 60-day period in which to review and refer comments relating to any aspect of the proposed regulations. No public hearing was held because none was requested.

In response to the **Federal Register Notice** dated **March 19, 2009 (74 FR 11814)**, we received no comments during the comment

period regarding FI-182-78.

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 1.1058-l(b) provides that a securities lending agreement must be in writing. We estimate that 11,742 securities brokers will enter into an average of 10 lending agreements a year and that it will take approximately 0.0833 hours to prepare each agreement. The total burden for these agreements is 9,781 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 **March 19, 2009 (74 FR 11814)**, 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.