

## SUPPORTING STATEMENT

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 382(a) of the Internal Revenue Code of 1986 limits the amount of a loss corporation's taxable income that can be used to offset certain loss carryovers for taxable years after an "ownership change." Section 382(g) provides that an ownership change occurs if, immediately after a transaction that results in a shift in ownership of the loss corporation's stock, the percentage of stock owned by one or more 5-percent shareholders has increased by more than 50 percentage points over the lowest percentage of stock owned by those shareholders during the testing period (generally a 3-year period). Thus, in order to determine whether an ownership change has occurred, it is necessary that a loss corporation keep records of certain changes in the ownership of its stock and options to acquire its stock and file an information statement describing such changes. See §1.382-2T(a)(2)(ii).

Under §1.382-2T(a)(2)(ii) of the regulations an information statement should be completed and attached to the federal income tax return for the taxable year in which a loss corporation has an owner shift, equity structure shift, or another transaction described in paragraph (a)(2)(i) of that section. As a result of these regulations (CO-69-87; CO-68-87), corporations without net operating losses, but with capital loss carryovers and/or excess credits are required to file the information statement described in §1.382-2T(a)(2)(ii) of the regulations. These regulations apply the expanded reporting requirement to income tax returns filed after October 10, 1989. The regulations in CO-18-90 modify the regulations so that a corporation is required to provide an information statement as a result of options only if such options are described in §1.382-4(d)(2).

Under the final regulations, a loss corporation electing to apply the rules of §1.382-2T(h)(4) to options must so state on the information statement required by §1.382-2T(a)(ii). The statement is attached to the corporate tax return showing the time and amount of relevant changes in stock ownership in order to more readily verify compliance with the provisions of section 382.

### 2. USE OF DATA

The reporting requirements will be used to verify compliance with section 382 of the Code.

### 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 notices of proposed rulemaking were published in the **Federal Register** on September 21, 1989 (CO-69-87 and CO-68-87) and November 5, 1992 (CO-18-90). Comments were received with respect to the notices of proposed rulemaking. A public hearing was held on February 2, 1993 with regard to CO-18-90. All comments were taken into account in the drafting of the final regulations. The final regulations were published in the **Federal Register** on March 18, 1994(CO-18-90) and June 27, 1991 (CO-69-87 and Co-68-87).

We received no comments during the comment period in response to the **Federal Register** notice (74 FR 11811), dated March 19, 2009.

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

Under §1.382-2T(a)(2)(ii) of the regulations an information statement should be completed and attached to the federal income tax return for the taxable year in which a loss corporation has an owner shift, equity structure shift, or another transaction described in paragraph (a)(2)(i) of that section. As a result of these regulations (CO-69-87;CO-68-87) corporations without net operating losses, but with capital loss carryovers and/or excess credits are required to file the information statement described in §1.382-2T(a)(2)(ii) of the regulations. We estimate that 60,000 corporations will take .3 hours each to prepare the information statement. The reporting burden for this requirement is 18,000 hours. In addition, we estimate that 60,000 corporations will spend about 3 hours each keeping records to comply with the information reporting requirement (180,000 hours), and 15,000 corporations will spend 1.5 hours (22,500 hours) for a total burden of 202,500 hours. The estimated total annual reporting and recordkeeping burden is 220,500 hours (18,000 + 202,500).

Section 1.382-4(h)(2)(vi) of these regulations (CO-18-90) states that a loss corporation making an election to apply the alternative look-back rule or to elect treatment under §1.382-2T(h)(4) is required to file a statement with its federal income tax return. We estimate that 150 corporations will make one of the elections in the final regulations, with a time per respondent for either election of .5 hours, for a total burden of 75 hours. These 75 hours are added to the 220,500 hours to make a total of 220,575 burden hours created by this regulation.

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

<b>Respondents</b>	<b>Hours Per Respondents</b>	<b>Total Burden Hours</b>
75,150	2.935	220, 575

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register** notice dated March 19, 2009 (74 FR 11811), 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 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.

## OMB EXPIRATION DATE

We believe the public interest will be better served by not printing an expiration date on the form(s) in this package.

Printing the expiration date on the form will result in increased costs because of the need to replace inventories that become obsolete by passage of the expiration date each time OMB approval is renewed. Without printing the expiration date, supplies of the form could continue to be used.

The time period during which the current edition of the form(s) in this package will continue to be usable cannot be predicted. It could easily span several cycles of review and OMB clearance renewal. In addition, usage fluctuates unpredictably. This makes it necessary to maintain a substantial inventory of forms in the supply line at all times. This includes supplies owned by both the Government and the public. Reprinting of the form cannot be reliably scheduled to coincide with an OMB approval expiration date. This form may be privately printed by users at their own expense. Some businesses print complex and expensive marginally punched continuous versions, their expense, for use in their computers. The form may be printed by commercial printers and stocked for sale. In such cases, printing the expiration date on the form could result in extra costs to the users.

Not printing the expiration date on the form(s) will also avoid confusion among taxpayers who may have identical forms with different expiration dates in their possession.

For the above reasons we request authorization to omit printing the expiration date on the form(s) in this package.