

SUPPORTING STATEMENT
Notice 97-34

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The Small Business Job Protection Act ("Act") of 1996 added several new reporting requirements with respect to transfers to, and distributions from, foreign trusts and the receipt of large gifts from foreign persons. The Act also requires a U.S. owner of a foreign trust to ensure that the trust file an annual return and annually furnish information as the Secretary prescribes to U.S. owners and U.S. beneficiaries of the trust. See sections 6048 and 6039F. The new statutory provisions generally give the Secretary broad discretion to prescribe the time and manner for the required reporting. The Act also extensively revises section 6677 by increasing penalties for failure to comply with section 6048. The notice provides substantial guidance on the time and manner for reporting these transactions, as well as other interpretative guidance on the scope of these provisions.

Section I of the notice announces that the Service is revising Forms 3520 and 3520-A in a manner that will generally allow a U.S. person, or a foreign trust owned by a U.S. person, to comply with all of the new reporting requirements by using these forms.

Section III (previously labeled Section II) provides that U.S. persons that make gratuitous transfers to a foreign trust must report that transfer on Form 3520. Certain qualified obligations must also be reported on Form 3520 as well as certain transfers to foreign trusts that are required to be reported under section 1494.

Section IV (previously labeled Section III) of the notice provides that a U.S. owner of a foreign trust must ensure that the trust files a Form 3520-A and includes a foreign grantor trust information statement with that form. The notice sets forth the information that must be included on this information statement. Section III also provides that a foreign trust that wishes to appoint a U.S. agent must enter into a binding agreement with the agent in accordance

with the notice. If the agreement terminates for any reason, the foreign trust must notify the Commissioner by amending its Form 3520-A.

Section V (previously labeled Section IV) describes the information that a foreign trust must provide to its U.S. beneficiaries in order for the beneficiary to determine the proper manner in which to report distributions from that trust on Form 3520.

Section VI (previously labeled Section V) of the notice describes how to report receipt of gifts under section 6039F, the dollar thresholds for reporting such gifts, and the interaction of filing requirements under sections 6048(c) and 6039F.

Section VII explains the applicable penalties for failure to file the information requested under sections 6048 and 6039F and Section VIII provides special transition rules.

2. USE OF DATA

The information collected pursuant to the notice will be used by the Service to monitor compliance with the new provisions of the Act and to administer the tax laws relating to foreign trusts and receipt of gifts from foreign persons.

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

Notice 97-34 was published in the Internal Revenue Bulletin on June 23, 1997 (1997-25 IRB 22).

We received no comments during the comment period in response to the Federal Register notice dated June 26, 2009 (74 FR 30682).

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 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section III provides that gratuitous transfers, certain qualified obligations, and certain transfers reportable under section 1494 must be reported on Form 3520. Section 1494 was repealed in 1997. The remaining reporting requirements are now incorporated into Form 3520 and the burden relating to these reporting requirements is included in the burden for Form 3520.

Section IV provides that a foreign trust with a U.S. owner must annually file Form 3520-A and attach a Foreign Grantor Trust Information Statement to the form. The trust must also send a Foreign Grantor Trust Owner statement to each U.S. owner of a portion of the trust and a Foreign Grantor Trust Beneficiary Statement to certain U.S. beneficiaries. These reporting requirements are now incorporated into Form 3520-A, and therefore the burden related to completing these statements (6,000 hours) is now included in the burden for Form 3520-A.

Section IV also provides procedures and instructions for entering into a binding agreement to appoint a U.S. agent. The procedures and instructions for entering into such an agreement are now contained in the instructions to Form 3520-A, and thus, the burden related to these procedures (1,250 hours) is now reflected in the burden for Form 3520-A.

Section V describes information that a foreign nongrantor trust must provide a U.S. beneficiary in order for the beneficiary to determine the proper manner in which to report distributions from the trust on Form 3520. We estimate that 5000 trusts will spend .75 hours to complete these statements, called a Foreign Nongrantor Trust Beneficiary Statement. The total burden for this requirement is 3,750 hours.

Section VI requires U.S. persons to report certain large foreign gifts in any taxable year on Form 3520. The reporting of this information is now incorporated in Form 3520 and the burden is reflected in the burden of Form 3520.

TOTAL BURDEN PER YEAR: 3,750 hours.

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

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated June 26, 2009 (74 FR 30682), 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 COSTS 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 notice 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 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 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 section 6103 of the Code.

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.