

## **Supporting Statement (CO-8-91)**

### **1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Section 1.305-5(b) of the Income Tax Regulations relates to constructive distributions on preferred stock. The regulations revise the treatment of preferred stock callable at a premium by the issuer, generally treating the call premium as a constructive distribution only if redemption pursuant to the call provision is more likely than not to occur. Generally, the issuer's determination of the likelihood of the exercise of a right is binding on all holders of the stock, unless a holder discloses that it has made a determination different from that of the issuer. A holder can take an inconsistent position only after adequate disclosure. Accordingly, the information requested is necessary to notify the Internal Revenue Service that a holder has made a determination regarding the likelihood of exercise of a right that is different from the issuer's determination.

### **2. USE OF DATA**

This information is required to notify the Internal Revenue Service that a holder of preferred stock callable at a premium by the issuer has made a determination regarding the likelihood of exercise of the right to call that is different from the issuer's determination. Unless such disclosure is made, the issuer's determination of the likelihood of exercise of a right is binding on all holders of the stock.

### **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 in the Federal Register on June 22, 1994 (59 FR 32160). No public hearing was requested and none was held. The final regulations were published in the Federal Register on December 21, 1995 (60 FR 66134).

We received no comments during the comment period in response to the **Federal Register Notice** dated May 29, 2009 (74 FR 25803).

**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 U.S.C. 6103.

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

Burden Estimation:

Section 1.305-5(b)(5) provides that an issuer's determination of the likelihood of exercise of a right is

binding on all holders of the stock, unless the holder discloses that its determination of the likelihood of exercise is different from the issuer's determination. The disclosure must be made in the manner prescribed by the Commissioner for disclosing an item for purposes of section 6662(d)(2)(B) and attached to the holder's timely filed Federal income tax return for the taxable year that includes the date the holder acquires the preferred stock. The issuer must provide information as to its determination to the holder in a reasonable manner.

We estimate that there will be 2,000 respondents. The estimated annual burden per respondent varies from 5 minutes to 15 minutes, depending on individual circumstances, with an estimated average of 10 minutes. The estimated total annual reporting burden will be 333 hours.

Estimates of 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 May 29, 2009, 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 responses from taxpayers on this subject. As a result, estimates of these 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. EXCEPTION 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.