

SUPPORTING STATEMENT

1. **CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

The regulations under sections 861(b), 862(b), and 863(a) of the Internal Revenue Code relate to the determination of taxable income from sources within and without the United States. The guidance contained in section 1.861-8 of the Income Tax Regulations indicates when and how different types of deductions are to be allocated and apportioned between gross income from sources within and without the United States in order to determine the amount of taxable income from those sources. This determination is critical to the computation of the limitation, under section 904, on the foreign tax credit allowed under sections 27(a) and 901, but does not affect the determination of taxable income for purposes of determining pre-credit income tax liability.

Because of the mechanics of section 904 of the Code, an increase in the amount of taxable income from sources without the United States will increase the amount of the income taxes that are paid to foreign governments that can be used as a credit against the income tax owed to the United States government. One method of increasing the amount of the foreign tax credit limitation is to deduct a smaller amount from income from sources without the United States (hereafter referred to as "foreign source income"), and to correspondingly deduct a greater amount of deductions from income from sources within the United States (hereafter referred to as "U.S. source income").

The deduction for state income taxes is significant in computing taxable income for purposes of determining the foreign tax credit limitation. The final regulations clarify and supplement the prior rules pertaining to the allocation and apportionment of the deduction for state income taxes, and provide guidance through examples that illustrate the rules in additional factual situations. Section 1.861-8(e)(6)(ii)(C) of the final regulations contains a requirement that a taxpayer that deviates from the methodology illustrated in certain examples, must attach a statement to its federal income tax return explaining the change. Section 1.861-8(e)(6)(ii)(D) of the final regulations provides two elective and alternative safe harbor methods for allocating and apportioning deductions in certain situations, and requires a taxpayer that elects to use one of these methods to file a notice of that election with its federal income tax return for the year with respect to which the election is made.

2. **USE OF DATA**

The reporting performed by taxpayers under section 1.861-8(e)(6)(ii)(C) is used by the Internal Revenue Service to estimate the amount of resources to be required upon audit to verify the allocation and apportionment of the deduction for state income taxes. If this collection of information were not conducted, the duration of the audits of large multinational corporations could be unnecessarily prolonged, thus increasing the cost both to the government and the affected taxpayers.

The reporting performed by taxpayers under section 1.861-8(e)(6)(ii)(D) is used by the

Service to estimate the amount of resources to be required upon audit to verify the allocation and apportionment of the deduction for state income taxes, and to monitor consistent compliance with the terms of the elective safe harbor methods. If this collection of information were not conducted, the duration of the audits of large multinational corporations could be unnecessarily prolonged, thus increasing the cost both to the government and the affected taxpayers. In addition, the consistent compliance with the conditions for making the election could not be as readily determined.

3. **USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

The collection of information does not involve the use of automated, electronic, or other technological collection techniques.

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 December 12, 1989. Final regulations were published in the **Federal Register** on March 12, 1991.

In response to the Federal Register Noticed dated November 19, 2009 (74 F.R. 60030), we received no comments during the comment period regarding INTL-12-88.

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**

Estimates of Burden:

The reporting requirements contained in section 1.861-8(e) (6)(ii)(C) and section 1.861-8(e)(6)(ii)(D) affect only those taxpayers claiming foreign tax credits that have also elected to use a methodology other than that generally provided in the regulations. Furthermore, the reporting requirements consist primarily of describing a methodology that the taxpayer has already devised and utilized in completing its tax return.

We estimate that this requirement will produce only 1,000 respondents annually. Each respondent will file annually. It will take approximately 1 hour to complete this requirement. The total burden for this requirement will be 1,000 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 November 19, 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 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.