

SUPPORTING STATEMENT  
REG-106030-98 (TD 9305 – final)

CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This document contains final regulations under section 863(d) governing the source of income from certain space and ocean activities. It also contains final regulations under section 863(a), (d), and (e) governing the source of income from certain communications activities. In addition, this document contains final regulations under section 863(a) and (b), amending the regulations in § 1.863-3 to conform those regulations to these final regulations. The final regulations primarily affect persons who derive income from activities conducted in space, or on or under water not within the jurisdiction of a foreign country, possession of the United States, or the United States (in international water). The final regulations also affect persons who derive income from transmission of communications.

2 USE OF DATA

The data will be used by the Service to determine whether the taxpayer determined the source of its income in a manner consistent with the requirements of the regulations.

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 January 17, 2001 (66 FR 3903). Reg-106030-98 was published in the Federal Register on September 19, 2005 (70 FR 54859). Final regulations (TD 9305) were published in the Federal register on December 27, 2006 (71 FR77594).

In response to the Federal Register notice (75 FR 5864), dated February 4, 2010, we received no comments during the comment period regarding REG-106030-98.

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

The collections of information in these final regulations are in §§ 1.863–8(g) and 1.863–9(k). This information is required by the IRS to monitor compliance with the Federal tax rules for determining the source of income from space or ocean activities, or from transmission of communications.

Section 1.863-8(g) provides that when a taxpayer allocates gross income, to the satisfaction of the Commissioner, under paragraph (b)(3)(in the case of certain foreign persons), or under paragraph (b)(4)(ii)(C) (in the case of certain production activity), or under paragraph (b)(5) (in the case of services), it does so by using the method on a timely filed original return (including extensions). An amended return does not qualify, and section 301.9100 will not apply. In all cases, a taxpayer must maintain contemporaneous documentation in existence when such return is filed regarding the allocation of gross income, and the allocation of expenses, losses, or other deductions, the methodology used, and the circumstances justifying use of that methodology. The taxpayer must produce such documentation within 30 days of a request. We estimate

that 50 taxpayers will take from 3 to 7 hours to comply with this requirement, with an estimated average of 5 hours per taxpayer. The total burden for this requirement is estimated to be 250 hours.

Section 1.863-9(k) of the regulations provides the reporting and documentation requirements governing income derived from communications activity. Under that section, when a taxpayer allocates gross income to the satisfaction of the Commissioner under paragraph (b)(2)(ii)(D) (in the case of certain foreign persons), or paragraph (d)(1)(ii)(in the case of separate transactions), it does so by using the method on a timely filed original return (including extensions). An amended return does not qualify, and section 301.9100 will not apply. In all cases, a taxpayer must maintain contemporaneous documentation in existence when such return is filed regarding the allocation of gross income, and the allocation of expenses, losses, or other deductions, the methodology used, and the circumstances justifying use of that methodology. The taxpayer must produce such documentation within 30 days of a request. We estimate that 200 taxpayers will take from 3 to 7 hours to comply with this requirement, with an estimated average of 5 hours per taxpayer. The total burden for this requirement is estimated to 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 February 4, 2010 (75 FR 5864), 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.