

## SUPPORTING STATEMENT

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 1362 of the Internal Revenue Code provides for the election, termination, and tax effect of subchapter S status. Sections 1.1362-1 through 1.1362-7 of the Income Tax Regulations provide the specific procedures and requirements necessary to implement § 1362, including the filing of various elections and statements with the Internal Revenue Service.

### 2. USE OF DATA

This information is collected by the Internal Revenue Service and used in the administration of the Internal Revenue 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

A notice of proposed rulemaking was published in the **Federal Register** on December 27, 1988 (53 FR 52190). In response to written comments received on these proposed regulations, a second notice of proposed rulemaking was published on April 17, 1992 (57 FR 13676). Final regulations (T.D. 8449) were published in the **Federal Register** on November 25, 1992 (57 FR 55445).

In response to the Federal Register Notice (**75 FR 28329**), dated **May 20, 2010**, we received no comments during the comment period regarding PS-260-82.

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

a. Under §1.1362-2(b)(1) of the regulations, if an S election under §1362(a) of the Code terminates because the corporation ceases to be a small business corporation as defined in §1361(b), the corporation should attach to its return for the tax year the election terminated a notification that a termination has occurred and the date of the termination. We estimate that 20 notifications will be filed annually and that each will take 0.5 hour to complete. The total burden for this citation is 10 hours per year.

b. Under §1.1362-4(c) of the regulations, a corporation that believes its S election terminated inadvertently may request a waiver from the Service by filing a ruling request containing all the relevant facts

regarding the terminating event. We estimate that 30 requests will be filed annually and that each will take 5 hours to complete. The total burden for this citation is 150 hours.

c. Under §1.1362-4(e) of the regulations, a corporation and its shareholders must file a statement agreeing to any adjustments the Service might require in waiving an inadvertent termination, such statement to include names, addresses, and other identifying information. We estimate that 30 statements will be filed annually and that each will take 1 hour to complete. The total burden for this citation is 30 hours.

d. Under §1.1362-5(a) of the regulations, a corporation whose S election has terminated may request the consent of the Service to reelect before the end of the 5-year waiting period specified in §1362(g) of the Code by filing a ruling request containing all the relevant facts and circumstances. We estimate that 15 requests will be filed annually and that each will take 5 hours to complete. The total burden for this citation is 75 hours.

e. Under §1.1362-6(a)(2) of the regulations, a small business corporation (§1361(b) of the Code) elects to be an S corporation (§1362(a)) by filing Form 2553 with the designated service center before the 16th day of the third month of the tax year for which the election is to be effective or at any time during the immediately preceding tax year. The burden of this requirement is reflected in the burden estimates for Form 2553.

f. Under §1.1362-6(a)(3) of the regulations, a corporation revokes an S election by filing a statement of revocation with the service center where the election was filed, such a statement to be accompanied by a statement of consent by shareholders owning a majority of the corporation, as specified by §1.1362-6(b). We estimate that 30 revocations will be filed annually and that each will take 1.5 hours to complete, including consents. The total burden for these citations is 45 hours.

g. Under §1.1362-6(a)(4) of the regulations, a corporation rescinds a revocation by filing a statement of rescission with the service center where the revocation was filed, such statement to be accompanied by a statement of consent by each shareholder who consented to the revocation and each person who became a shareholder after the revocation, as specified by §1.1362-6(b). We estimate that 3 rescissions

will be filed annually and that each will take 1.5 hours to complete, including consents. The total burden for these citations is 4.5 hours.

h. Under §1.1362-6(a)(5) of the regulations, a corporation elects not to apply the pro rata allocation rules of §1362(e)(2) of the Code to an S termination year by filing a statement of election with the corporation's return for the C short year, such statement to be accompanied by a statement of consent by all persons who were shareholders during the S short year or on the first day of the C short year, as specified by §1.1362-6(b). We estimate that 5 elections will be filed annually and that each will take 1.5 hours to complete, including consents. The total burden for these citations is 7.5 hours.

i. Under §1.1362-7(b) of the regulations, an S corporation and all affected shareholders may elect to apply the passive investment income provisions of §1.1362-2(c)(5) to open tax years by filing a return or an amended return that is consistent with these rules for the tax year for which the election is made and each subsequent year. The burden of this requirement is reflected in the burden estimates for Forms 1040X and 1120X.

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 May 20, 2010, 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.