

Supporting Statement
TD 9422 – S Corporations Guidance Under AJCA of 2004
OMB No. 1545-2114

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This document contains final regulations that provide guidance regarding certain changes made to the rules governing S corporations under the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005. The final regulations replace obsolete references in the current regulations and allow taxpayers to make proper use of the provisions that made changes to prior law. The final regulations include guidance on the S corporation family shareholder rules, the definitions of “powers of appointment” and “potential current beneficiaries” (PCBs) with regard to electing small business trusts (ESBTs), the allowance of suspended losses to the spouse or former spouse of an S corporation shareholder, and relief for inadvertently terminated or invalid qualified subchapter S subsidiary (QSub) elections. The final regulations affect S corporations and their shareholders. The collection of information is required by §1.1361(m)(2)(ii)(A). § 1.1361–1(m)(2)(ii) states the election statement must include:

- A) The name, address, and taxpayer identification number of the trust, the potential current beneficiaries, and the S corporations in which the trust currently holds stock. If the trust includes a power described in paragraph (m)(4)(vi)(B) of this section, then the election statement must include a statement that such a power is included in the instrument, but does not need to include the name, address, or taxpayer identification number of any particular charity or any other information regarding the power.
- (B) An identification of the election as an ESBT election made under section 1361(e)(3);
- (C) The first date on which the trust owned stock in each S corporation;
- (D) The date on which the election is to become effective (not earlier than 15 days and two months before the date on which the election is filed); and
- (E) Representations signed by the trustee stating that—
 - (1) The trust meets the definitional requirements of section 1361(e)(1); and
 - (2) All potential current beneficiaries of the trust meet the shareholder requirements of section 1361(b)(1).”

The information must be reported by the trustees of trust electing to be ESBTs.

2. USE OF DATA

This information will be used by the IRS to determine the number of shareholders of the corporation in which the trust holds stock and whether the corporation is an eligible S corporation. The information is required so that the IRS can determine the proper number of PCBs who will be deemed to be shareholders of the corporation as of the ESBT election for purposes of the section 1361(b)(1)(A) limit. This will allow the IRS to determine whether the trust is eligible to be an ESBT and whether the corporation is eligible to be an S corporation. The information already required by the current regulation is used to

determine both the number of deemed shareholders of the corporation and whether those shareholders are eligible to hold S corporation stock. The information must be reported by the trustees of trust electing to be ESBTs.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission.

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

On September 28, 2007, a notice of proposed rulemaking and a notice of public hearing (REG-143326-05) were published in the *Federal Register* (72 FR 55132). No one requested to speak at the public hearing. Accordingly, the public hearing scheduled for January 16, 2008, was cancelled in a notice published in the *Federal Register* (73 FR 1131) on January 7, 2008. No one submitted written or electronic comments, which were due by December 27, 2007. Thus, the proposed regulations were adopted by Treasury Decision 9422, published in the *Federal Register* (73 FR 47526) on August 14, 2008.

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

There is no personally identifiable information collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

We estimate that there are 26,000 trusts per year that will make the ESBT election that include charitable distribution powers described in the proposed regulation. We estimate that it will take an average of 1 hour for each, for a total annual burden estimated of 26,000 hours.

Estimates of the annualized cost to respondents for the hour burdens associated with the information collection are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our proposed regulation (REG-143326-05), dated September 28, 2007 (72 FR 55132), requested public comments, including 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

This is a new collection of information associated with final rulemaking under TD 9244. The information will be used to determine the number of shareholders of the corporation in which the trust holds stock and whether the corporation is an eligible S corporation. The final rule was published August 14, 2008, at 73 FR 47526. This action is being taken to activate the OMB number assigned to the NPRM as "file with comment."

The addition of 26,000 burden hours is attributed to new statute.

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 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.