

## SUPPORTING STATEMENT

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 382(l)(5)(H) of the Internal Revenue Code provides that a loss corporation may elect not to have section 382(l)(5) apply. If a loss corporation elects not to have section 382(l)(5) apply, section 382(l)(6) will apply. The election required by section 382(l)(5)(H) and implemented by section 1.382-9(i) of the regulations is necessary to assure that the proper amount of carryover attributes are used by a loss corporation following specified types of ownership changes. Similarly, the election under section 1.382-9(p)(2) of the regulations to apply the regulations retroactively is necessary to assure that the proper amount of carryover attributes are used by a loss corporation following specified types of ownership changes.

### 2. USE OF DATA

For purposes of electing not to have section 382(l)(5) of the Code apply to an ownership change, a loss corporation must attach the following statement to the tax return of the loss corporation for the taxable year in which the ownership change occurs: "THIS IS AN ELECTION UNDER § 1.382-9(i) NOT TO APPLY THE PROVISIONS OF SECTION 382(l)(5) TO THE OWNERSHIP CHANGE OCCURRING PURSUANT TO A PLAN OF REORGANIZATION CONFIRMED BY THE COURT ON [INSERT CONFIRMATION DATE]." Section 382(l)(5) will determine the amount and utilization of certain corporate tax attributes after an ownership change if the loss corporation does not timely file such an election and section 382(l)(5) otherwise applies.

For purposes of electing to have the provisions of the final regulations apply before the general effective date of the final regulations, a loss corporation must attach the following statement (including any extensions of time) of the loss corporation's tax return for the taxable year which includes the change date or the date that the loss corporation files its first tax return after March 17, 1994: "THIS IS AN ELECTION TO APPLY §§1.382-3(j), (k), (l), (m) (2), AND (n)(2) OF THE INCOME TAX REGULATIONS TO THE OWNERSHIP CHANGE OCCURRING PURSUANT TO A PLAN OF REORGANIZATION CONFIRMED BY THE COURT ON [INSERT

CONFIRMATION DATE]."

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

These regulations were published in the **Federal Register** as a Notice of Proposed Rulemaking on August 6, 1992 (57 FR 34736). No public hearing was held as none was requested. Final regulations (TD 8530), were published in the **Federal Register** on March 18, 1994 (59 FR 12840).

In response to the Federal Register Notice dated August 30, 2010 (75 FR 53021), we received no comments during the comment period regarding CO-88-90.

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

Section 1.382-9(i) requires that a loss corporation electing not to have section 382(l)(5) of the Code apply to an ownership change must file a statement evidencing this election with its tax return. It is estimated that 250 respondents will spend 15 minutes each to file the election. The reporting burden for this requirement is 63 hours. Section 1.382-9(p)(2) requires that a loss corporation electing to apply the provisions of the regulations retroactively must file a statement evidencing this election with its tax return. It is estimated that 3,000 respondents will spend 15 minutes each to file the election. The reporting burden for this requirement is 750 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 August 30, 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.