

SUPPORTING STATEMENT
REG-147144-06 (T.D. 9446)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 367(a) provides that gain must be recognized when a U.S. person (U.S. transferor) transfers property to a foreign corporation in certain subchapter C nonrecognition provisions (e.g., sections 351, 361). One exception to this general rule is afforded to a U.S. transferor who transfers stock or securities (transferred corporation) to a foreign corporation (transferee foreign corporation) and who enters into a gain recognition agreement (GRA). The terms of the GRA provide that the U.S. transferor will recognize gain if within five years of the initial transfer, certain events (triggering events) occur, such as a sale of the transferred stock by the transferee foreign corporation. Treas. Reg. §1.367(a)-8 provides rules for how U.S. transferors enter into GRAs and also provides exceptions to certain triggering events.

The temporary and proposed regulations provide rules that certain transactions that would otherwise constitute triggering events will not be triggering events if the U.S. transferor complies with particular requirements. *See* Treas. Reg. §1.367(a)-8T(e)(1), (2), (3), (6), (8), and (9). One such requirement is that the U.S. transferor attach a new GRA, with modifications, to its return for the year in which the transaction occurs as well as a notice statement that describes the transaction and provides identifying information of certain parties involved in the transaction.

The temporary and proposed regulations also clarify that a GRA will terminate in certain transactions if the basis of the transferee foreign corporation stock or transferred stock, as applicable, is of an appropriate amount. If the basis of the relevant stock exceeds the appropriate amount, taxpayers may elect to reduce the basis in the stock by attaching a statement to the return for the year of the relevant transaction. *See* Treas. Reg. §1.367(a)-8T(f)(1)(v) and (f)(3)(ii).

Finally, to facilitate electronic filing, the temporary and proposed regulations also revise current §1.367(a)-8(b)(3)(iii), which provides that taxpayers report gain and interest that may be owed under section 367(a) by entering the relevant amounts labeled as “sec. 367 interest” or “sec. 367 tax” on the face of the return. This rule has been revised to require that taxpayers calculate the section 367 tax and interest that is owed on a separate schedule attached to the taxpayer’s return rather than entering the terms on the face of the return. *See* Treas. Reg. §1.367(a)-8T(b)(3)(iii).

In summary, the collection of information is necessary both to facilitate audit and examination of returns as well as to facilitate electronic filing.

2. USE OF DATA

The information collected by the IRS will be used for audit and examination purposes.

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 whenever 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 THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

This final regulation was published in the Federal Register on February 5, 2007.

We received no comments during the comment period in response to the Federal Register notice **dated August 30, 2010, (75 FR 53019)**.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OF 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

There are three main categories of rules that entail collections of information in these temporary and proposed regulations. The first category consists of triggering event exceptions that require the U.S. transferor to attach a new GRA, with modifications, and/or a notice statement describing the transaction and providing identifying information of certain parties involved in the transaction. See Treas. Reg. §1.367(a)-8T(e)(1), (2), (3), (6), (8), and (9). We estimate that 70 taxpayers will comply with these exceptions and that it will take each taxpayer approximately 2 hours to prepare the new GRA and election. The total reporting burden for this collection of information is therefore 140 hours.

The second category provides that taxpayers may reduce the basis in stock so that a GRA terminates upon certain transactions. See §1.367(a)-8T(f)(1)(v) and (f)(3)(ii). The election is made by attaching to the return for the taxable year in which the relevant transaction occurs a statement describing the stock that has been disposed of or received, as applicable, and the basis of the stock before and after the election is made. The statement also includes the date on which the stock was disposed of or received, as applicable. For this collection of information, we estimate that 30 taxpayers will elect to reduce stock basis and that it will take approximately one hour to prepare the schedule. The total reporting burden for this collection of information is therefore 30 hours.

The third and final category of collection of information is a rule that requires taxpayers to calculate and label the tax and interest that are due on a schedule that is to be attached to the taxpayer's return. See Treas. Reg. §1.367(a)-8T(b)(3)(iii). This rule does not require any more information to be reported than does the current rule; rather, the rule simply requires that the information be reported on a separate schedule rather than written on the face of the return. For this collection of information, we estimate that 70 taxpayers will report section 367 tax or interest and that it will take approximately one hour to prepare the schedule. The total reporting burden for this collection of information is therefore 70 hours. This rule facilitates electronic filing.

The total reporting burden for these three categories of information collections is 240 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, (75 FR 53019)**, 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

Not applicable.

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 displays a valid OMB control number. Books and 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.