

SUPPORTING STATEMENT
Treasury Decision 9518, Notice 2010-85, Notice 2011-25
Form 8944 and Form 8948

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This document contains final amendments to the Regulations on Income Taxes (26 FR art 1) and the Regulations on Procedure and Administration (26 CFR part 301) under section 6011(e) of the Code relating to the requirement for specified tax return preparers to file individual income tax returns using magnetic media (electronically). Section 17 of the Worker, Homeownership, and Business Assistance Act of 2009 (Pub. L. 111-92 (123 Stat. 2984, 2996)) amended section 6011(e)(1) and added new section 6011(e)(3) as an exception to the restriction in section 6011(e)(1) that the Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be filed in any format other than paper forms supplied by the Secretary. New section 6011(e)(3) provides that the Secretary shall require the filing on magnetic media of any individual income tax returns prepared and filed by a specified tax return preparer. Section 6011(e)(3)(B) defines a *specified tax return preparer* as, with respect to any calendar year, any tax return preparer unless such preparer reasonably expects to file 10 or fewer individual income tax returns during such calendar year. Section 6011(e)(3) does not define the term "filed."

Under section 6011(e)(3)(C), an *individual income tax return* is any return of the tax imposed by subtitle A on individuals, estates, and trusts. This includes any return of income tax in the Form 1040 series and Form 1041 series. It also includes Form 990-T (Exempt Organization Business Income Tax Return) when the exempt organization is a trust subject to tax on unrelated business taxable income under section 511(b). At this time, certain individual income tax returns such as Form 990-T, Form 1040-NR (U.S. Nonresident Alien Income Tax Return), Form 1041-QFT (U.S. Income Tax Return for Qualified Funeral Trusts), and all amended individual income tax returns, such as Form 1040X (Amended U.S. Individual Income Tax Return), cannot be filed electronically and, therefore, currently are exempt from the electronic filing requirement. See § 301.6011-

The IRS also released Notice 2010-85, see IR-2010-116 (December 1, 2010) and 2010-51 IRB 877 (December 20, 2010), which contained a proposed revenue procedure that would provide guidance to tax return preparers regarding the format and content of undue hardship waiver requests and taxpayer choice statements. Notice 2010-85 explains the circumstances when someone who is a tax return preparer (for returns filed after 12/31/10, IRC 6011(e)(3)(B) defines a "specified tax return preparer" as any tax preparer, unless such preparer reasonably expects to file 10 or fewer individual income tax returns during a calendar year) qualifies for an administrative exemption from filing a certain tax return electronically. Specified tax return preparers

use Form 8944 to request an undue hardship waiver from the section 6011(e)(3) requirement to electronically file returns of income tax imposed by subtitle A on individuals, estates, or trusts. Form 8948 is to be used only by specified tax return preparers that are required to e-file the covered returns they prepare that are able to be filed electronically. Form 8948 is used to explain which exception applies when a covered return is prepared and filed on paper.

This proposed revenue procedure was adopted as revised by revenue procedure 2011-25. This revenue procedure provides guidance to specified tax return preparers regarding the format and content of requests for waiver of the magnetic media (electronic) filing requirement due to undue hardship, and regarding the time and manner in which specified tax return preparers who seek an undue hardship waiver of the electronic filing requirement must submit their written requests for consideration by the IRS, under *section 6011 (e) (3)* and § 301.6011-7 of the Regulations on Procedure and Administration (26 CFR Part 301). This revenue procedure also provides guidance to tax return preparers, specified tax return preparers, and taxpayers regarding how to document a taxpayer's choice to file an individual income tax return in paper format when the return is prepared by a tax return preparer or specified tax return preparer but filed by the taxpayer.

2. USE OF DATA

The information regarding taxpayer choice is to be used by tax return preparers to demonstrate that the related paper return was not subject to the electronic filing requirement because (1) the taxpayer chose to file the return in paper format, and (2) the return was prepared by the preparer but filed by the taxpayer.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The recordkeeping burden associated with keeping documentation of a taxpayer choice to file in paper format is very minimal. A tax return preparer generally will not be submitting this documentation to the IRS. The IRS use of information technology in that regard is inapplicable and unnecessary.

There are no plans to provide online applications for undue hardship waiver requests because online processing may not be appropriate for the collection of this information in this submission. Form 8944, "Preparer e-file Hardship Waiver Request", and Form 8948, "Preparer Explanation for Not Filing Electronically", are available for download at www.irs.gov.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible. The

IRS will make all reasonable efforts to identify and eliminate duplication in the collection of information from tax return preparers.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

The recordkeeping burden associated with documenting and keeping documentation of a taxpayer choice to file in paper format is very minimal. A tax return preparer generally will not be submitting this documentation to the IRS.

The Treasury Department and IRS have considered but are not aware of any methods to further minimize any burden on small entities.

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 (REG-100194-10) was published in the Federal Register (75 FR 75439) on December 3, 2010. Concurrently with publication of the proposed regulations, the IRS released Notice 2010-85, see IR-2010-116 (December 1, 2010) and 2010-51 IRB 877 (December 20, 2010). A public hearing was held on January 7, 2011. Commentators appeared at the public hearing and commented on the notice of proposed rulemaking and Notice 2010-85. All comments were considered and are available for public inspection at [http:// www.regulations.gov](http://www.regulations.gov) or upon request.

In response to the **Federal Register Notice** issued by the Internal Revenue Service (**76 FR 39227**) dated **February 16, 2011**, we received no comments regarding these Final Regulations and Revenue Procedure.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, the information collected is confidential as required by the Privacy Act of 1974, 5 U.S.C. § 552a.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

None.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

<u>Form</u>	<u>Number of Responses</u>	<u>Time per Response</u>	<u>Total Hours</u>
8944	90,000	7.99	719,100
8948	8,820,000	1.99	17,551,800

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

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register Notice (76 FR 39227) dated February 16, 2011**, requested public comments on estimates of capital or start-up costs and the 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 ANNUAL COST TO THE FEDERAL GOVERNMENT

The primary cost to the government consists of the cost of printing Form 8944 and Form 8948. We estimate that the cost of printing the form is \$60,000.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS, AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

Displaying the expiration date of an OMB control number is inappropriate because it could cause confusion by leading tax return preparers and the public to believe that the regulations sunset as of the expiration date. Tax return preparers and the general public are unlikely to be aware that the IRS intends to request renewal of the OMB approval and to obtain a new expiration date before the approval expires.

18. EXCEPTIONS TO THE CERTIFICATION REQUIREMENT OF OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to 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 information are confidential, as required by 26 U.S.C. 6103.