

## SUPPORTING STATEMENT

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 475 of the Code provides that taxpayers that are dealers in securities (as defined in section 475(c)(1)) are required to mark to market securities (as defined in section 475(c)(2)) held by them, with certain exceptions. The exceptions are for any security held for investment (section 475(b)(1)(A)), certain debt instruments not held for sale (section 475(b)(1)(B)), and certain hedges (section 475(b)(1)(C)). Section 475(b)(2) states "A security shall not be treated as described in subparagraph (A), (B), or (C) of paragraph (1), as the case may be, unless such security is clearly identified in the dealer's records as being described in such subparagraph before the close of the day on which the securities are acquired .... (emphasis added) The proposed regulations clarify those statutory identification requirements.

Section 1.475(b)-4(a) requires a taxpayer to identify which of the three subparagraphs of section 475(b)(1) allow the taxpayer to identify a particular security as exempt from the mark-to-market requirements of section 475. This requirement was explicitly stated because the statute itself requires that the subparagraph be stated, but informal telephone contacts between I.R.S. and Treasury employees and taxpayer's representatives strongly suggested that many taxpayers were claiming exemption without meeting that statutory requirement. If we do not make it clear that they must meet the statutory requirement, many taxpayers will continue to make identifications that do not meet the statutory requirement. If that happens, agents could properly disallow those identifications.

Section 1.475(b)-4(b) clarifies that a taxpayer may make a timely identification of a security that qualifies for one of the exceptions described above on the day it acquires that security, even though its basis in that security is determined by reference to the basis of that security in the hands of the person from whom it was acquired or by reference to the basis of other property in the hands of the taxpayer.

Section 1.475(b)-4(c) specifies the date on which an identification may be timely made when a taxpayer legs in to

or legs out of certain synthetic debt instruments. This section of the regulation imposes a recordkeeping requirement only in that it states how the statutory identification requirements apply to this type of security.

The regulations provide guidance on the definition of the term "dealer in securities" for purposes of section 475 of the Internal Revenue Code. Any taxpayer that meets the definition is required to use mark to market accounting for certain securities that it holds.

The dealer definition is based on whether a taxpayer engages in certain types of transactions with "customers." The regulations clarify that a taxpayer's transactions with members of its consolidated group or other taxpayers may be transactions with customers for purposes of section 475. Thus, a taxpayer may be a dealer in securities for purposes of section 475 based solely on transactions with other members of its consolidated group. Section 1.475(c)-1(a)(3)(iii) makes noncustomer status the default and requires taxpayers to make an affirmative election to consider intermember transactions when applying the dealer definition. The election is made by attaching an appropriate statement to the taxpayer's return.

## 2. USE OF DATA

The timely identification requirement of sec. 1.475(b)-4 is designed to aid the IRS in administering the law and to prevent manipulation, such as recharacterization of why a taxpayer held securities in view of later developments. This information will be used to verify that a taxpayer is properly reporting whether its securities are subject to mark-to-market treatment. The likely recordkeepers are businesses or other for-profit institutions. If such recordkeeping were not required, then the IRS would not be able to achieve these objectives.

The information required by sec. 1.475(c)-1(a)(3)(iii) is needed by the IRS to monitor compliance with the federal tax rules regarding mark to market accounting for dealers in securities under section 475 of the Code.

## 3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We have no plans to offer electronic filing. IRS publication, 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 (REG-209724-94, FI-42-94) was published in the Federal Register on January 4, 1995 (60 FR 397).

A notice of proposed rulemaking (REG-209780-95, FI-32-95) was published in the Federal Register on June 20, 1996 (61 FR 31474). A public hearing was held on October 15, 1996.

Final regulations (TD 8700) adopted the above regulations.

The final regulations were published in the Federal Register on December 26, 1996, (61 FR 67715).

We received no comments during the comment period in response to the Federal Register notice (76 FR 30430), dated May 25, 2011.

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

## RESPONDENTS

Not applicable.

### **10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and return information are confidential as required by 26 USC 6103.

### **11. JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

### **12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

The recordkeeping requirements are provided in §1.475(b)-4, paragraphs a, b, and c of which are described in the second, third, and fourth paragraphs of item 1 above. We estimate that 2,500 businesses or other for-profit institutions will make the identification requirement under section 1.475(b)-4 of the regulation, with an estimated annual burden per recordkeeper of 1 hour, with an estimated total annual recordkeeping burden of 2,500 hours.

Section 1.475(c)-1(a)(3)(iii) makes noncustomer status the default and requires taxpayers to make an affirmative election to consider intermember transactions when applying the dealer definition. The election is made by attaching an appropriate statement to the taxpayer's return. We estimate that 900 consolidated groups will make this election and that it will take approximately .5 hours to prepare the statement. The burden for this requirement is 450 hours. Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information are not available at this time.

### **13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

As suggested by OMB, our Federal Register notice dated May 25, 2011, 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.