

SUPPORTING STATEMENT T.D. 8684

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 1254 of the Internal Revenue Code provides rules for determining the amount of gain that is treated as ordinary income upon the disposition of certain natural resource recapture property. Section 1254(b)(2) provides that in the case of the sale or exchange of stock in an S corporation, rules similar to the rules of section 751 shall be applied to that portion of the excess of the amount realized over the adjusted basis of the stock which is attributable to expenditures referred to in section 1254(a)(1)(A).

Section 1.1254-4(c)(1) of the regulations provides as a general rule that any gain recognized by a shareholder upon a sale or exchange of S corporation stock is treated as ordinary income to the extent of the shareholder's section 1254 costs (with respect to the shares sold or exchanged). However, section 1.1254-4(c)(2) provides that the general rule does not apply to any portion of the gain recognized on the sale or exchange of the stock that the taxpayer establishes is not attributable to section 1254 costs. The portion of the gain recognized that is not attributable to section 1254 costs is that portion of the gain recognized that exceeds the amount of ordinary income that the shareholder would have recognized under section 1254 (with respect to the shares sold or exchanged) if, immediately prior to the sale or exchange of the stock, the corporation had sold at fair market value all of the corporation's property the disposition of which would result in the recognition by the shareholder of ordinary income under section 1254.

2. USE OF DATA

In order to establish that a portion of the gain recognized upon a sale or exchange of stock in the S corporation is not attributable to the shareholder's section 1254 costs (and therefore not treated as ordinary income), the shareholder must attach a statement to the shareholder's tax return detailing the shareholder's share of the fair market values and bases, and the shareholder's section 1254 costs, for each of the S corporation's natural resource recapture

properties held immediately before the sale or exchange of the stock. The statement with the required information is necessary for the Internal Revenue Service to monitor compliance with the statutory and regulatory requirements.

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

A Notice of Proposed Rulemaking was published in the Federal Register on December 21, 1995 (60 FR 66238). A public hearing was not held because no hearing was requested. The final regulations were published in the Federal Register on October 10, 1996 (61 FR 53062).

We received no comments during the comment period in response to the Federal Register notice dated May 14 2011, (76 FR 21097).

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 1254 of the Internal Revenue Code provides rules for determining the amount of gain that is treated as ordinary income upon the disposition of certain natural resource recapture property. Section 1.1254(c)(2) provides that gain recognized on the sale or exchange of the stock in an S corporation is not treated as ordinary income if the taxpayer establishes that the gain is not attributable to section 1254 costs. The shareholder may establish that the gain is not attributable to section 1254 costs by attaching a statement to the shareholder's return setting forth certain necessary information. We estimate that annually approximately 1,000 taxpayers will be affected and that will take approximately 1 hour to prepare the required information. Thus, the estimated total annual burden is 1,000 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 May 14 2011, (76 FR 21097), 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.