

## SUPPORTING STATEMENT T.D. 8802

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Regulations section 1.337(d)-4 amends the Income Tax Regulations to require that taxable gain or deductible loss be recognized when a taxable corporation transfers all or substantially all of its assets to a tax-exempt entity. If a taxable corporation changes its status to a tax-exempt entity, that change is considered a transfer of all of the taxable corporation's assets to a tax-exempt entity. An exception in §1.337(d)-4(b)(1) provides that gain or loss is not recognized for assets transferred (or deemed transferred) from a taxable corporation that will be used in an activity of a tax-exempt entity the income from which is subject to tax under §511(a) of the Internal Revenue Code (which taxes the income from unrelated business activities of certain tax-exempt organizations). If the assets are used partly in an unrelated business activity and partly in other activities, then a part of the gain or loss is not recognized.

The taxable corporation's exception from gain recognition for assets that will be used partly or wholly in an unrelated business activity makes it important for the taxable corporation to know how the tax-exempt entity will use the assets transferred from the taxable corporation. Accordingly, §1.337(d)-4(b)(1)(A) provides that the taxable corporation may rely on a written representation from the tax-exempt entity as to its use of the property, using a reasonable method of allocation if the property is used partly in an unrelated business activity. The regulation does not require the tax-exempt entity to furnish this written representation.

### 2. USE OF DATA

The information will be used by the taxable corporation in computing the gain on an asset that will be fully or partially nontaxable due to the asset's use by the tax-exempt entity in an unrelated trade or business. The information may also be used by the IRS in determining the correct amount of tax on the transaction.

3. USE OF IMPROVED INFORMATION 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 REDUCE DUPLICATION

We have attempted to eliminate duplication within the agency whenever possible.

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

The tax-exempt entity is required to use a method of allocating use of an asset between an unrelated business activity and other activities that is consistent with the method it uses under existing law for allocating business expenses and depreciation between an unrelated business activity and other activities. See §1.512(a)-1(c) of the Income Tax Regulations.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH THE 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

The notice of proposed rulemaking was published in the Federal Register on January 15, 1997 (62 FR 2064). A public hearing was held on May 6, 1997. The final regulations were published in the Federal Register on December 29, 1998 (63 FR 71591).

We received no comments during the comment period in response to the Federal Register notice dated May 12, 2011, (76 FR 27747).

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 U.S.C. § 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.337(d)-4(b)(1)(A) allows a taxable corporation to rely on a tax-exempt entity's written representation estimating the percentage of the future use of a taxable corporation's asset in the tax-exempt entity's activity taxable under section 511(a), using a reasonable method of allocation. The IRS estimates that the annual number of respondents will be 25; the burden per respondent will vary from 1 hour to 10 hours, depending on individual circumstances, with an estimated average of 5 hours, and that the estimated total annual reporting burden will be 125 hours. The estimated frequency of responses will be one time per respondent.

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 12, 2011, (76 FR 27747) 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 ANNUAL COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASON 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 REQUIREMENT OF 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, or 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 pertaining 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 return information are confidential as required by 26 U.S.C. § 6103.