

## SUPPORTING STATEMENT (T.D. 8940)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 338 of the Internal Revenue Code provides rules under which a qualifying stock acquisition is treated as an asset acquisition (a “deemed asset acquisition”) when an appropriate election is made. Section 1060 provides rules for the allocation of consideration when a trade or business is transferred. The collection of information is necessary to make the election, to calculate and collect the appropriate amount of tax liability when a qualifying stock acquisition is made, to determine the persons liable for such tax, and to determine the bases of assets acquired in the deemed asset acquisition.

2. USE OF DATA

The information will be used to calculate and collect the appropriate amount of tax liability when a qualifying stock acquisition is made, to determine the persons liable for such tax, and to determine the bases of assets acquired in the deemed asset acquisition.

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 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 August 10, 1999 (64 FR 43462). Another notice of proposed rulemaking and temporary regulations, that are virtually the same as the proposed regulations, were published in the **Federal Register** on August 10, 1999 (65 FR 1236). The final regulations were published in the **Federal Register** on February 13, 2001 (66 FR 9925).

We received no comments during the comment period in response to the **Federal Register Notice dated June 6, 2011, (76 FR 32407)**.

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

We estimate the burden for this regulation to be as follows:

1. Time and manner of making election. Section 1.338-2(d) provides that a section 338 election will be made in accordance with the Form 8023 and its instructions. The burden associated with the requirement is reflected in the burden of Form 8023.

2. Notice requirement for U.S. persons holding stock in foreign target. Section 1.338-2(e)(4) provides that if a target subject to a section 338 election was a controlled foreign corporation at any time during the portion of its taxable year that ends on its acquisition date, the purchasing corporation must deliver written notice of the election (and a copy of Form 8023, its attachments and instructions) to certain individuals. Section 1.338-2(e)(4)(iii) provides that the notice must contain certain information and a declaration. We estimate that annually 45 respondents will make one response each, which will take an average of .56 hours, for an estimated total annual reporting burden of 25 hours.

3. Procedure for making gain recognition election. Section 1.338-5(d)(3) provides that the gain recognition election, containing information specified in the form and its instructions, is made by attaching a gain recognition statement to a timely filed Form 8023 for target. The burden associated with this requirement was previously approved by OMB under OMB #1545-1428.

4. Procedure for filing a combined return. Section 1.338-10(a)(4) generally provides that a combined deemed sale return may be filed for all of the targets from a single selling consolidated group. Section 1.338-10(a)(4)(iii) provides that the combined return must include an attachment containing certain information and a declaration. The burden associated with this requirement was previously approved by OMB under OMB #1545-1428.

5. Simultaneous joint election requirement. Section 1.338(h)(10)-1(d)(2) provides that a section 338(h)(10) election is made jointly by P and the selling corporation (or selling group or S corporation shareholders) on Form 8023 in accordance with the instructions to the form. The burden associated with this requirement is reflected in the burden of Form 8023.

6. Time and manner of reporting. Section 1.1060-1(e)(ii)(A) provides that both a seller and a purchaser must each file an asset acquisition statement on Form 8594. Section 1.1060-1(e)(ii)(B) provides that any subsequent adjustments be reflected in a supplemental asset acquisition statement on Form 8594. The burden associated with this requirement is reflected in the burden

of Form 8594.

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, **Federal Register Notice dated June 6, 2011, (76 FR 32407)**, 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 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 the 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.