

SUPPORTING STATEMENT
REG-108524 (TD 9394/Final)
(Form 8804-C)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

A partnership with effectively connected taxable income allocable under section 704 to a foreign partner must pay a withholding tax under section 1446 (1446 tax) on that partner's allocable share of ECTI. A partnership pays its section 1446 tax in installments similar to a corporation's payment of its estimated tax. See section 1.1446-3(b). Temporary regulations under section 1.1446-6T provide when a partnership may consider certain deductions and losses of a foreign partner to reduce or eliminate the partnership's obligation to pay withholding tax under section 1446 on effectively connected taxable income allocable under section 704 to such partner. These regulations finalize the temporary regulations.

The foreign partner will use Form 8804-C, "Certificate of Partner-Level Items to Reduce Section 1446 Withholding," to certify to the partnership that either it has partner-level deductions and losses that can reduce the required 1446 tax on its ECTI or that its investment in the partnership is its only activity giving rise to effectively connected income, gain, loss or deduction. The foreign partner will also use Form 8804-C to update information previously certified the partnership for the same taxable year.

Form 8804-C will be a form a foreign partner would voluntary submit to the partnership if it chooses to provide a certification that could reduce or eliminate the partnership's need to withhold 1446 tax. The partnership also voluntarily chooses whether or not to rely on the form in determining the amount of 1446 tax it withholds. A partnership that relies on the Form 8804-C must submit it to the IRS with Form 8813, "Partnership Withholding Tax Payment Voucher (Section 1446)," for the first installment period on which it relies on the original or any updated Form 8804-C to reduce its payment of 1446 tax. The partnership would also submit Form 8804-C to the IRS when it files the annual Form 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax". The submission of Form 8804-C to the IRS is necessary so that the IRS can determine that the partnership correctly reduced the amount of 1446 tax it withholds and pays to the IRS.

The information to be provided on Form 8804-C and the

requirements to submit the information to the IRS are substantially the same as that required under section 1.1446-6T. Section 1.1446-6T had no particular form for the partner to provide the information. Collection of this information was previously approved by OMB on September 22, 2005, under OMB control number 1545-1934. To ensure uniformity of the certificates and to reduce the likelihood of an inadvertently omitted item causing the certificate to be defective, section 1.1446-6 will provide for the collection of this information be on Form 8804-C.

2. USE OF DATA

The information collected by the IRS will be used for audit and examination purposes and in determining whether credits and/or refunds should be issued.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We have no plans at this time to offer electronic filing because of the low volume compared to the cost of electronic enabling.

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

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American

Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding Form 8804-C.

Treasury Decision 9394 was published in the Federal register (73 FR 23069), on April 29, 2008.

In response to the Federal Register notice (76 FR 43381), on July 20, 2011, we received no comments during the comment period regarding Form 8804-C or TD 9394.

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

The burden estimate is as follows:

Section 1.871-10(d)(3) will require a partner that makes an election under section 871(d) or 882(d) of the Internal Revenue Code to treat income from real property located in the United States as effectively connected income to notify the partnership of such election. The submission of this information is mandatory when it applies.

Section 1.1446-4 defines a nominee as a U.S. person that holds an interest in a publicly traded partnership on behalf of foreign persons. The regulations require a nominee to notify the partnership in a statement attached to the Form W-9 the nominee submits to the partnership that it is a nominee holding interests on behalf of foreign partners. The submission of this information is voluntary.

Section 1.1446-3 requires a foreign trust or estate that is a partner in a partnership subject to section 1446 to issue a statement to its beneficiaries informing them of the amount of the credit under section 33 that the beneficiary is entitled to take for 1446 tax paid by the partnership.

Section 1.1446-3 requires a partnership making installment payment made on the partner's behalf.

The total annual burden is as follows:

	<u>Number of Responses</u>	<u>Time per Response</u>	<u>Total Hours</u>
Form 8804-C	1,000	18.70	18,700
TD 9394	1		1
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	1,001		18,701

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 (76 FR 43381), on July 20, 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

The primary cost to the government consists of the cost of printing Form 8804-C. We estimate that the cost of printing the form is \$ 2,500.

15. REASONS FOR CHANGE IN BURDEN

All the burden for this information collection is now associated with form 8804-C. One hour is being associated with TD 9394. The burden previously approved by OMB has decreased by 7,417 hours.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

See attachment.

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.

OMB EXPIRATION DATE

We believe the public interest will be better served by not printing an expiration date on the form(s) in this package.

Printing the expiration date on the form will result in increased costs because of the need to replace inventories that become obsolete by passage of the expiration date each time OMB approval is renewed. Without printing the expiration date, supplies of the form could continue to be used.

The time period during which the current edition of the form(s) in this package will continue to be usable cannot be predicted. It could easily span several cycles of review and OMB clearance renewal. In addition, usage fluctuates unpredictably. This makes it necessary to maintain a substantial inventory of forms in the supply line at all times. This includes supplies owned by both the Government and the public. Reprinting of the form cannot be reliably scheduled to coincide with an OMB approval expiration date. This form may be privately printed by users at their own expense. Some businesses print complex and expensive marginally punched continuous versions, their expense, for use in their computers. The form may be printed by commercial printers and stocked for sale. In such cases, printing the expiration date on the form could result in extra costs to the users.

Not printing the expiration date on the form(s) will also avoid confusion among taxpayers who may have identical forms with different expiration dates in their possession.

For the above reasons we request authorization to omit printing the expiration date on the form(s) in this package.