

**SUPPORTING STATEMENT  
(TD 8395)**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Section 2701(c)(3)(C) of the Internal Revenue Code provides that a transferor (or applicable family member) of a junior interest in an entity (*i.e.*, common stock in a closely held corporation) who retains a preferred interest in the same entity, may either waive treatment or elect to treat payments by the entity as qualified payments. Based on the valuation method set forth in the statute, such a waiver or election will affect the value of the gift of the junior interest for gift tax purposes.

Section 2701(d)(3)(A)(iii) of the Code provides that a taxpayer may elect to treat a late qualified payment by an entity as a taxable event and thereby recognize an increase in taxable gifts in the year of the election.

Section 6501(c) of the Code provides that the gift tax statute of limitations for assessment will run only if transfers subject to section 2701 and 2702 are adequately disclosed on a gift tax return.

The regulations provide guidance on how taxpayers make these elections, what information is required, and how (and in what detail) the transfer is to be disclosed on the gift tax return (Form 709).

**2. USE OF DATA**

The information will be used on audit to verify that the statutory elections have been made or waived and whether disclosure has been adequately made. In addition, the information is required to determine the proper increase in a transferor's taxable transfers upon the happening of a subsequent taxable event and to determine the applicable tax rate for such transfers.

**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**

Two separate Notices of Proposed Rulemaking (PS-92-90 and PS-30-91) were published in the **Federal Register** on April 9, 1991 (56 FR 14321), and on September 11, 1991 (56 FR 46244). Two public hearings were held and written comments were received. After consideration of all the comments, the proposed regulations were adopted as final regulations (TD 8395) and published in the **Federal Register** on February 4, 1992 (57 FR 4250). A correction to the final was published in the **Federal Register** on April 2, 1992 (64 FR 11264).

In response to the **Federal Register Notice** dated January 27, 2012 (77 FR 4404), we received no comments during the comment period regarding TD 8395.

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

Burden Estimation:

Section 25.2701-2(c) of the regulations sets forth rules pursuant to section 2701(c)(3)(C) of the Code that permits taxpayers to waive or elect payments by an entity as qualified payments. The election is made by attaching a statement setting forth the terms of the election to a Form 709, Federal Gift Tax Return. We estimate that this requirement will affect 150 taxpayers annually and that they will expend approximately .20 hours each in such activities. The total burden for this requirement is 30 hours.

In addition, section 25.2701-4(d) of the regulations sets forth rules pursuant to section 2701(d)(3)(A)(iii) of the Code that allows taxpayers to treat late entity payments as a taxable event and thereby increase taxable gifts in the year of the election. The election is made by attaching a statement setting forth the terms of the election to a Form 709, Federal Gift Tax Return. We estimate that this requirement will affect 20 taxpayers annually and that they will expend approximately .15 hours each in such activities. The total burden for this requirement is 3 hours.

Finally, section 301.6501(c)-1(e) of the regulations sets forth rules pursuant to section 6501(c) of the Code to provide guidance to taxpayers on how to report and describe transactions subject to section 2701 and 2702. The description of the transaction must be adequately shown on a Form 709, Federal Gift Tax Return. We estimate that this requirement will affect 1030 taxpayers annually and that they will expend approximately .45 hours each in such activities. The total burden for this requirement is 463 hours.

The total burden for this citation is -

Reporting respondents:	1,200
Time per response:	<u>.413</u>
Total burden	496

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 January 27, 2012, 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.