

SUPPORTING STATEMENT
REG-118966-97; REG-124069-02

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

REG-118966-97 (TD 8850)

Section 6038 of the Code requires controlling partners of foreign partnerships and certain shareholders of foreign corporations to furnish information reports to the Service. Section 6038(a)(5) gives the Service authority to require similar information reporting from 10-percent partners of foreign partnerships which are controlled by U.S. persons holding at least 10-percent interests.

Section 6038(a)(3) limits reporting until the Service prescribes the time and manner of reporting. Section 6038(d) gives the Secretary the authority to allow one information report in cases where two or more United States persons would be required to report.

The regulations prescribe the time and manner of reporting under section 6038. In addition, the regulations exercise the Service's authority to require reporting for certain 10-percent partners in controlled foreign partnerships. If certain conditions are met, the proposed regulations eliminate the filing requirement for certain partners in order to prevent duplicative filing requirements.

REG-124069-02 (TD 9065)

Section 6038 of the Code requires information reporting by certain U.S. partners with interests in controlled foreign partnerships.

Treas. Reg. § 1.6038-3 provides that a U.S. person, which owns a 10% or greater interest in a controlled foreign partnership, must annually report information relating to that foreign partnership on Form 8865, "Return of U.S. Persons with Respect to Certain Foreign Partnership."

Treas. Reg. § 1.6038-3 sets forth detailed reporting requirements for filing Form 8865 when the foreign partnership is also required to file Form 1065, U.S. Return of Partnership Income. However, this rule does not directly address the filing requirements for Form 8865, when a United States partner files electronically its income tax return (including any attachments such as Form 8865).

Regulations amend Treas. Reg. § 1.6038-3 to provide that a United States partner must follow the filing requirements that are specified in the instructions for Form 8865 when the United States partner must file Form 8865 and the foreign partnership completes and files Form 1065 or Form 1065-B, U.S. Return for Electing Large Partnerships. This amendment would facilitate revisions to the filing requirements for Form 8865 (such as electronic filing of Form 8865).

2. USE OF DATA

This information is required by the IRS to identify foreign partnerships and foreign corporations which are controlled by United States persons.

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

REG-118966-97

A notice of proposed rulemaking (REG-118966-97) was published in the *Federal Register* on September 9, 1998 (63 FR 48144). A public hearing was held on November 10, 1998. After consideration of all written comments, a final regulation was published in the Federal Register on December 28, 1999 (64 FR 72545), TD 8850.

REG-124069-02

A notice of proposed rulemaking (67 FR 78202) was published simultaneously with the temporary regulations (67 FR 78174), TD 9033, in the *Federal Register* on December 23, 2002. A final regulation was published on July 1, 2003 (68 FR 39012), TD 9065, that also removed the temporary regulations.

We received no comments during the comment period in response to the *Federal Register* notice dated June 13, 2012 (77 FR 35478).

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

REG-118966-97

Section 1.6038-3(a) requires that every United States person that controls a foreign partnership must complete and file an annual information return on Form 8865 (Information Return of U.S. Persons With Respect to Certain Foreign Partnerships). The burden of complying with the reporting requirement will be reflected on Form 8865.

Section 1.6038-3(c)(4) requires that a United States person who does not furnish an information return must file a statement with the person's income tax return indicating that the filing requirement has been or will be satisfied, identifying the person who has or will file the return, identifying the IRS Service Center where the return was or will be filed, and providing any additional information as Form 8865 (or a replacement form) and the accompanying instructions may require. We estimate that 600 taxpayers will be required to comply with the proposed collection of information under 1.6038-3(c)(4). We estimate that it will take approximately .83 hours, on average, to comply with the reporting requirement. The total burden for this reporting requirement is 500 hours.

REG-124069-02

The final regulation amends Treas. Reg. § 1.6038-3 to provide that a United States partner must follow the filing requirements that are specified in the instructions for Form 8865 when the United States partner must file Form 8865 and the foreign partnership completes and files Form 1065 or Form 1065-B.

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 June 13, 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 regulations sunset 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.