

## **SUPPORTING STATEMENT**

### **1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

The attached Treasury Decision creates a taxable entity called a qualified settlement fund. A qualified settlement fund is a fund established or approved by a governmental authority to resolve or satisfy certain liabilities, such as those involving tort or breach of contract. Section 468B(g) of the Internal Revenue Code requires the current income taxation of all escrow accounts, settlement funds, and similar funds. Section 468B(g) also requires the Secretary to prescribe regulations providing for the taxation of these accounts and funds. Because qualified settlement funds are taxable persons, these entities are required to file the various tax and information returns that are required to be filed by other taxpayers. In addition, certain persons (transferors) who are required to make transfers to qualified settlement funds are required to provide the Service and the fund with a schedule of those transfers and, in the case of transfers of certain partnership interests and non-publicly traded stock, a qualified appraisal substantiating the fair market value of the partnership interest or stock. Moreover, the fund and the transferors are permitted to make a joint election and the fund is permitted to make a second election, each of which must be filed with the Internal Revenue Service.

This document contains final regulations relating to the tax treatment of transfers to funds, accounts, and trusts used in the settlement of certain controversies, the taxation of income earned by these funds, and the tax treatment of distributions made by these funds. Changes made to the applicable law were made by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The regulations affect these settlement funds, taxpayers who make transfers to these funds and taxpayers who receive distributions from these funds.

### **2. USE OF DATA**

Qualified settlement funds are required to file income tax returns annually and estimated tax returns quarterly in the same manner as a corporation. These funds are also required to file information returns and other returns generally on the same basis as a corporation. In addition, transferors

are required to provide to the fund and the Internal Revenue Service on an annual basis, a schedule of transfers (along with copies of any necessary qualified appraisal) that they made to the fund during the preceding taxable year. In addition, on a one time basis the fund and each of the transferors are required to file statements with respect to an election that is available to them. Finally, on a one-time basis the fund is permitted to make an election which must be filed with the Internal Revenue Service.

The Internal Revenue Service uses the annual income tax returns and the quarterly estimated tax returns to determine a fund's liability for federal income taxes. Pursuant to the provisions of subtitle F of the Code these returns are generally due annually and quarterly, respectively. The other returns required to be filed by a fund are necessary to assure that the fund makes proper payment of taxes other than income taxes (e.g., excise taxes or withholding taxes). In addition, the requirements for filing information returns and the schedule of payments by transferors is needed to assure that transferors, the funds, and persons who receive payments from the fund treat items of income and deduction consistently. Qualified appraisals are necessary to assure that transferors substantiate the amount of deductions they take for transfers of certain partnership interests and nonpublicly traded stock. The election statement is necessary to inform the Service that a fund will be treated as a qualified settlement fund earlier than the date that it would otherwise be so treated under the regulations. The Service needs this qualified settlement fund only when it is so considered for federal income tax purposes.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS publication, 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

A notice of proposed rulemaking was published in the **Federal Register** (57 FR 5399), on February 14, 1992, and provided the public with a 60-day period in which to review and provide public comments relating to any aspect of the proposed regulations. In addition, a public hearing on the proposed regulations was held on May 27, 1992. Final regulations were published in the **Federal Register** (57 FR 60983), on December 23, 1992.

We received no comments during the comment period in response to the **Federal Register** notice dated October 16, 2012 (77 FR 63423).

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

Section 1.468B-1(j)(2)(ii) requires electing transferors and funds to file election statements if a fund is to be treated as a qualified settlement fund prior to the time it would otherwise meet the requirements of these regulations. It is estimated that 1,000 respondents will make one response each, which is estimated to take 15 minutes to 35 minutes, depending on individual circumstances, with an estimated average of 25 minutes to prepare, for a total estimated reporting burden of 417 hours.

Section 1.468B-3(b) requires transferors to furnish copies of a qualified appraisal in the case of certain transfers of stock and partnership interests. The qualified appraisal must be prepared by a qualified appraiser and therefore may not be prepared by the transferor or the qualified settlement fund. Thus in order to substantiate an income tax deduction for transfers of the specified stock and partnership interests, the transferor will generally be required to incur a fee. It is estimated that 250 respondents will make one response each, which is estimated to take 8 to 12 hours, depending on individual circumstances, with an estimated average of 10 hours to prepare, for a total estimated reporting burden of 2,500 hours.

Section 1.468B-3(e) requires transferors to file a statement setting forth the information with respect to transfers they made to the fund during a calendar year. It is estimated that 1,500 respondents will make one response each, which is estimated to take 15 minutes to 35 minutes, depending on individual circumstances, with an estimated average of 25 minutes to prepare for a total estimated reporting burden of 625 hours.

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 October 16, 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.