

SUPPORTING STATEMENT  
Proposed Regulation  
REG-106796-12

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 162(m)(6) limits the allowable deduction for remuneration attributable to services provided by applicable individuals to certain health insurance providers that receive premiums from providing health insurance coverage. Section 162(m)(6) was added to the Code by section 9014 of the Patient Protection and Affordable Care Act (ACA) (Public Law 111-148, 124 Stat. 119, 868 (2010)).

The regulations provide for a de minimis exception. To determine whether an affiliated group with multiple health insurance issuers is eligible for the de minimis exception, the group must designate a parent entity (as defined in the regulations). The designation of the parent entity must be in writing, but the writing does not have to be submitted to the IRS. The written designation will aid the audit team during an audit.

2. USE OF DATA

The IRS will use the information during an audit to determine whether the affiliated group correctly determined whether it qualifies for the de minimis exception.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Not applicable. The proposed regulation does not designate the manner in which the designation is to be maintained.

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 INSTRUCTION AND FORMS, AND DATA ELEMENTS

On December 23, 2010, the Treasury Department and the IRS released Notice 2011–2 (2011–1 CB 260), which provides guidance on certain issues under section 162(m)(6). Specifically, the notice provides guidance on the application of the \$500,000 deduction limitation to deferred deduction remuneration that is earned during taxable years beginning after December 31, 2009, and before January 1, 2013, and deductible in a taxable year beginning after December 31, 2012. The notice also provides a de minimis exception under which a covered health insurance provider is exempt from the deduction limitation if the health insurance premiums received by it and all other entities with which it must be aggregated under section 162(m)(6) are less than two percent of their combined gross revenues. In addition, the notice provides that remuneration subject to section 162(m)(6) does not include remuneration earned by independent contractors who are not subject to section 409A (meaning generally that the independent contractor provides substantial services to multiple unrelated customers).

Finally, the notice provides that premiums under a reinsurance contract are not treated as premiums for providing health insurance coverage for purposes of section 162(m)(6).

Notice 2011–2 requested comments on the following issues:

- Application of the term covered health insurance provider, including the de minimis exception set forth in the notice and possible alternative de minimis exceptions;
- How deferred deduction remuneration should be attributed to a taxable year of an employer;
- Application of the term covered health insurance provider in the case of a corporate event such as a merger, acquisition, or reorganization; and
- Application of the deduction limitation to remuneration for services performed for insurers who are captive insurance companies or that provide reinsurance or stop loss insurance.

In drafting the proposed regulations, the Treasury Department and the IRS considered all comments received, many of which were discussed in the preamble of the proposed regulations.

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 U.S.C. 6103. Not applicable.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

We estimate that 451 entities will need to maintain this record. With an annual burden of 5 minutes for each entity. The overall annual burden for this collection is 23 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

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

This is a new collection.

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

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.