

SUPPORTING STATEMENT
(1545-1139)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This document contains final regulations under section 1367 of the Internal Revenue Code relating to adjustments to the basis of a shareholder's stock in an S corporation and the basis of indebtedness of an S corporation to a shareholder. This document also contains final regulations under section 1368 of the Internal Revenue Code relating to the treatment of distributions by an S corporation to its shareholders.

Changes to the applicable law were made by the Subchapter S Revision Act of 1982, the Technical Corrections Act of 1982, the Tax Reform Act of 1984, and the Tax Reform Act of 1986. The final regulations affect S corporations and their shareholders and are necessary to provide them with the guidance they need to comply with the applicable tax law.

2. USE OF DATA

The reporting requirements are to be performed by shareholders receiving distributions from S corporations and by shareholders disposing of their S corporation stock. The information is necessary in order to insure proper calculation of the tax liability arising from these transactions.

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

A notice of proposed rulemaking was published in the Federal Register on June 9, 1992 (57 FR 24426). The Notice of Proposed Rulemaking was submitted for (and received) OMB approval. A public hearing scheduled for September 14, 1992 was canceled because no one requested to testify. However, we did receive written comments on the proposed regulations. After consideration of the public comments, final regulations (TD 8508) were published in the Federal Register on January 3, 1994 (59 FR 12).

On August 18, 1998, the IRS published in the Federal Register (63 FR 44181), a notice of proposed rulemaking (REG-209446-82) regarding sections 1366, 1367, and 1368. Comments responding to the proposed regulations were received. The public hearing was canceled because there were no requests to speak. After considering the comments received, the proposed regulations are adopted as amended by this Treasury decision (TD 8852).

On April 12, 2007, the Treasury Department and the IRS published a notice of proposed rulemaking and a notice of public hearing (REG-144859-04, 2007-20 IRB 1245) in the Federal Register (72 FR 18417) proposing amendments to the regulations relating to the treatment of open account debt between S corporations and their shareholders. A public hearing on the proposed regulations was scheduled for July 31, 2007, but was cancelled because no one requested to speak. However, comments responding to the proposed regulations were received. After consideration of these

comments, the proposed regulations are adopted as revised by this Treasury decision. TD 9428 generally retains the provisions of the proposed regulations with the modifications discussed in the preamble.

In response to the Federal Register notice (79 FR 52113), dated September 2, 2014, we received no comments during the comment period regarding these 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 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the "Business Master File (BMF)" system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 24.046-Customer Account Data Engine Business Master File. The Internal Revenue Service PIAs can be found at <http://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems. .

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The burden for the election under 1.1368-1(f)(4) to forego previously taxed income in characterizing distributions is included in the burden of Form 1120S.

Section 1.1368-1(f)(2) allows an S corporation to elect to distribute earnings and profits before the accumulated adjustments account. We estimate that approximately 1,000 S

corporations will make this election and that each election will take .1 hour to complete. Total burden: 100 hours.

Section 1.1368-1(f)(3) allows an S corporation to elect to distribute earnings and profits before the accumulated adjustments account by utilizing a deemed dividend. We estimate that approximately 750 S corporations will make the election and that each election will take .1 hour to complete. Total burden: 75 hours.

Section 1.1368-1(g)(2)(i) allows an S corporation to elect to treat the corporation's taxable year as if it consisted of separate taxable years if there is a qualifying disposition. A qualifying disposition is any disposition of 20 percent or more of the stock of the S corporation in one or more transactions during any thirty-day period during the S corporation's taxable year. We estimate that approximately 250 S corporations will make this election and each election will take .1 hour to complete. Total burden: 25 hours.

Section 1.1367-1(f) allows an S corporation's shareholders to elect to decrease basis for losses and deductions before noncapital, nondeductible expenses if each shareholder agrees to carry over to the succeeding taxable years any noncapital, nondeductible expenses in excess of basis. The burden for the election under 1.1367-1(f) is included in the burden of Form 1040 or Form 1041.

This NPRM will require shareholders of an S corporation with open account debt to maintain records sufficient to verify that the open account debt does not exceed \$10,000 at the close of any day during the S corporation's taxable year. This modifies PS-264-82. The estimated burden per recordkeeper varies from 0.75 hours to 1.25 hours, depending on individual circumstances, with an estimated average of 1 hour. The estimated number of recordkeepers is 250, which brings the total number of responses to 2,250.

The estimated total annual recordkeeping burden is 250 hours, which results in a total of 450 burden hours. Estimates of the annualized cost to respondents for the hour burdens are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated September 2, 2014, 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, during the comment period 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.