

SUPPORTING STATEMENT
TD 8869
OMB# 1545-1590

Response to OMB Terms of Clearance

- OMB instructed IRS to consolidate all burden associated with Form 8869, Qualified Subchapter S Subsidiary Election, under a single information collection. The IRS has merged Form 8869 and associated burden under OMB No. 1545-0123, U.S. Business Income Tax Return, and has discontinued OMB No. 1545-1700, for which Form 8869 was previously assigned. Section 1.1361-3(a)(2) codified the use of this form for the purpose of an S corporation making an election to treat eligible subsidiary as a qualified subsidiary (QSub). The burden for the use of this form resides under OMB No. 1545-0123.
- OMB requested that the IRS provide a description of the information collection requirements in the supporting statement. A description has been provided in the response to question 2.

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The information collection requirements codified by TD 8869 under §§1.1361-3(a)(2), 1.1361-3(b)(1), and 1.1361-5(a)(2) relate to the treatment of corporate subsidiaries of S corporations and interpret the rules added to the Internal Revenue Code by section 1308 of the Small Business Job Protection Act of 1996, Public Law 104-188, 110 Stat. 1755 (Act), as amended by section 1601 of the Taxpayer Relief Act of 1997, Public Law 105-34, 111 Stat. 788 (1997 Act). The Act modified section 1361 of the Code to permit an S corporation (1) to own 80 percent or more of the stock of a C corporation, and (2) to elect to treat a wholly owned subsidiary as a qualified subchapter S subsidiary (QSub). The 1997 Act made a technical correction to section 1361 to provide regulatory authority to make exceptions to the general tax treatment of an election to be a QSub.

These regulations provide the public with guidance needed to comply with applicable law and will affect S corporations and their shareholders. Responses to these collections of information are required to determine the manner in which a corporate subsidiary of an S corporation will be treated under the Internal Revenue Code.

2. USE OF DATA

The information collection requirements of TD 8869 are to determine the manner in which a corporate subsidiary of an S corporation will be treated under the Internal Revenue Code.

Form 8869 Qualified Subchapter S Subsidiary Election, is used by an S corporation to elect to treat an eligible subsidiary as a QSSS, must be signed by a person authorized to sign the S corporation's return required to be filed under section 6037, and must be submitted to the IRS service center where the subsidiary filed its most recent tax return (if applicable). If an S corporation forms a subsidiary and makes a valid QSSS election (effective upon the date of the subsidiary's formation) for the subsidiary, the election should be submitted to the IRS service center where the S corporation filed its most recent return (§1.1361-3(a)(2)).

An S corporation may revoke a QSSS election under section 1361 by filing a statement with the IRS service center where the S corporation's most recent tax return was properly filed. The revocation statement must include the names, addresses, and taxpayer identification numbers of both the parent S corporation and the QSSS. The statement must be signed by a person authorized to sign the S corporation's return required to be filed under section 6037 (§1.1361-3(b)(1)).

If a QSSS election terminates because an event renders the subsidiary ineligible for QSSS status, the S corporation must attach to its return for the taxable year in which the termination occurs, a notification that a QSSS election has terminated, the date of the termination, and the names, addresses, and employer identification numbers of both the parent corporation and the QSSS (§1.1361-5(a)(2)).

Certain calculation methods are provided under §1.1362-8 that S corporations are required to perform to receive the benefit of a recharacterization of certain types of income.

The Service will use the information collected to determine the proper tax treatment of corporate subsidiaries of S corporations. The regulations will also provide additional certainty as to the tax consequences of making a QSUB election in situations where an S corporation acquires the remainder of a partially controlled subsidiary in exchange for stock of the S corporation and immediately thereafter elects QSUB status with respect to the subsidiary.

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

There are no small entities affected by this collection.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Consequences of less frequent collection on federal programs or policy activities could consist of a decrease in the amount of taxes collected by the Service, inaccurate and untimely filing of tax returns, and an increase in tax violations.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

The notice of proposed rulemaking was published in the Federal Register on April 22, 1998 (63 FR 19864). A public hearing was held on October 14, 1998. The final regulations were published in the Federal Register on January 25, 2000 (65 FR 3843).

We received no comments during the comment period in response to the **Federal Register** notice (81 FR 12783), dated March 10, 2016.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.1361-3(a)(2) requires a parent S corporation to submit a Form 8869 to obtain QSSS treatment for an otherwise eligible subsidiary. The burden associated with this requirement is claimed under OMB No. 1545-0123, U.S. Business Income Tax Return.

Section 1. 1361-3(b)(1) allows a parent S corporation to revoke a QSSS election with respect to a subsidiary by submitting a revocation statement to the appropriate service center. This statement must include the names, addresses, and taxpayer identification numbers of both the parent S corporation and the QSSS. The statement must be signed by a person authorized to sign the parent's tax return. We estimate that approximately 60 S corporations will revoke QSSS elections with respect to a subsidiary in a given year. The revocation statement should take no longer than 10 minutes per respondent to prepare. The total burden for this provision is 10 hours.

Section 1. 1361-5(a)(2) requires an S corporation to include, with its tax return for the year in which a subsidiary's QSSS election terminates (other than by revocation), a statement notifying the IRS of the termination of the subsidiary's QSSS statement. We estimate that approximately 600 S corporations will be required to submit this statement each year. The statement should take no longer than 10 minutes per respondent to prepare. The total burden for this provision is 100 hours.

Section 1.1362-8 requires S corporations to perform certain calculations to receive the benefit of a recharacterization of certain types of income. We estimate that 10,000 S corporations will choose to perform these calculations. The average burden per taxpayer varies from 30 minutes to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour. The total burden for this provision is 10,000 hours.

Citation	# Respondents	# Responses Per Respondent	Annual Responses	Hours Per Response	Total Burden
§1.1361-3(a)(2) Form 8869	Burden claimed under #1545-0123				
§1. 1361-3(b)(1) Revocation Statement	60	1	60	0.167	10
§1. 1361-5(a)(2) Termination	600	1	600	0.167	100
§1.1362-8 Benefit Calculation	10,000	1	10,000	1	10,000

	10,660	1	10,660	0.95	10,110
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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

There is no start-up costs associated with this collection.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no estimated annualized cost to the federal government.

15. REASONS FOR CHANGE IN BURDEN

This submission is being made to reinstate a previously approved collection. There is no change in the burden previously reported to OMB.

16. PLANS FOR TABULATION. STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING 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

There are no exceptions to the certification statement.

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 USC 6103.