

SUPPORTING STATEMENT
Notice 2009-85
OMB 1545-2123

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The Heroes Earnings Assistance and Relief Tax Act of 2008 enacted section 877A which addresses the tax responsibilities of expatriation. Section 877A(a) deems certain expatriating taxpayers to be subject to a mark to market tax regime and treats these individuals as having sold all of their property for fair market value on the day before they expatriate, and requires such gain to be reported on the taxpayer's final Form 1040. Section 877A(b) allows the taxpayer to make an election to defer the recognition of gain in the deemed year of sale, provided that adequate security is provided and accepted by the Service. Section 877A(c) provides special tax regimes for expatriates that expatriate with deferred compensation, an interest in a specified tax deferred account, or an interest in a nongrantor trust.

This Notice provides guidelines for taxpayers to comply with the tax responsibilities of expatriation as related to determining the amount of tax owed as well as a mechanism to defer that tax until an actual sale of the property occurs. Additionally, it provides guidelines for taxpayers to comply with the special tax regimes applicable to deferred compensation, an interest in a specified tax deferred account, or an interest in a nongrantor trust.

2. USE OF DATA

The Service will use the information for audit purposes to determine whether taxpayers appropriately complied with 877A by paying any mark to market tax; electing to defer the mark to market tax; complying with the rules applicable to deferred compensation, interests in specified tax deferred accounts, and interests in nongrantor trusts. With respect to taxpayers subject to the mark to market regime and those who elected to defer tax, the data will allow the future collection of the appropriate amount of tax when the asset is actually disposed of. With respect to those subject to the special tax regimes applicable to certain types of property, the data will allow the proper tracking and collection of tax upon the receipt of a distribution by the taxpayer of deferred compensation, from specified tax deferred accounts, and from a nongrantor trust in which the taxpayer has an interest.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission.

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

To the extent the taxpayer has an initial or annual filing obligation as set out under Notice 2009-85, data needs to be collected on an annual basis to ensure taxpayer compliance with the various sets of guidelines set out in Notice 2009-87 as related to the different assets that a taxpayer had an interest in on the day before the date of expatriation. Less frequent collection of data would cause the IRS to not accurately capture relevant annual information that affects an expatriate's annual tax liability, such that the IRS would not be able to enforce both an annual liability and a one-time future liability in certain other cases. In the case of a tax deferral agreement entered into under section 877A(b), annual reporting is a requirement associated with such a binding agreement.

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 collections to be inconsistent with guidelines in 5 CFR 1320(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

Notice 2009-85 was published in the Internal Revenue Bulletin on November 9, 2009 (2009-45 I.R.B. 598). The Treasury Department and the IRS invited public comments on the guidance provided in this notice. All materials submitted were available for public inspection and copying.

In response to the Federal Register notice (80 FR 75168), dated December 1, 2015, we received no comments during the comment period regarding Notice 2009-85.

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 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Burden estimation:

The first collection of information requirement in this Notice is required by 877A(a)(1). The collection of information relates to the requirement that the taxpayers obtain the fair market value appraisal of his or her property and report such value to the Service. This collection of information is necessary for the proper performance of the function of the Service because it notifies the Service that a tax has already been paid on such property and thus allows for a step up in basis to the taxpayer preventing double taxation on the same property when the actual sale of the property occurs.

A statement must be attached to the final Form 1040 filed by the expatriating taxpayer setting forth the fair market value of all assets the taxpayer owns along with the basis of such assets. We estimate that annually approximately 100 taxpayers will expatriate who will be subject to 877A, and that it will take approximately 4 hours to prepare the documentation. The total reporting burden is estimated to be 400 hours.

Additionally, the second collection requirement in the Notice is required by 877A(b)(4)(B). This collection of information is necessary for the proper performance of the function of the Service because it notifies the Service that the taxpayer is electing to defer a tax that is owed and allows for insuring that the tax owed is eventually paid.

A bond, letter of credit, or adequate security statement must be furnished to the appropriate SBSE Advisory Office by the expatriating taxpayer for

each item the taxpayer wishes to defer the tax. We estimate that annually approximately taxpayers will elect to defer the payment of tax, and that it will take approximately hours to prepare the documentation. The total reporting burden is estimated to be 20 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 December 1, 2015, 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 responses from taxpayers on this subject. As a result, estimates of these cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no estimated cost to the federal government.

15. REASONS FOR CHANGE IN BURDEN

There were no changes made to the document that resulted in any change to the burden previously reported to OMB.

We are making this submission to renew the OMB approval.

~~16.~~ PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

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

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

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 U.S.C. 6103.